

**ORDINANCE NO. 7-2009**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
REPEALING ELK GROVE MUNICIPAL CODE TITLES 1 THROUGH 22 AND  
ADOPTING REVISED TITLES 1 THROUGH 22 TO IMPLEMENT THE  
RECODIFICATION PROJECT**

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 comprehensively repeal the City of Elk Grove Municipal Code and adopt recodified text to continue in effect the applicability and enforceability of all ordinances previously enacted by the City of Elk Grove, to ensure that code regulations are consistent with State and Federal laws, to reorganize and simplify the organization of the document, and to instantiate the Code as a unique document of the City of Elk Grove.

Section 2: Repeal

The City Council hereby repeals Titles 1 through 22 (and corresponding chapters) of the Elk Grove Municipal Code.

Section 3: Action

The City Council hereby adopts Titles 1 through 22 (and corresponding chapters) as shown on Exhibit A (on file in the City Clerk's Office).

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 affect; 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prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force.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:** 7-2009  
**INTRODUCED:** March 25, 2009  
**ADOPTED:** April 8, 2009  
**EFFECTIVE:** May 8, 2009

  
\_\_\_\_\_  
PATRICK HUME, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:

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

Date signed: April 16, 2009

## **EXHIBIT A**

### **TITLE 1**

#### **GENERAL PROVISIONS**

##### **Chapters:**

- 1.01 Code Adoption**
- 1.02 Municipal Elections**
- 1.04 Enforcement of Code Violation**
- 1.06 Judicial Review of City Decisions**
- 1.07 Voting by the City Council**
- 1.08 Enforcement of Code**
- 1.11 Appeals**
- 1.12 Administrative Citations**

##### **Chapter 1.01**

#### **CODE ADOPTION**

##### **Sections:**

- 1.01.010 Code adopted – Effective date.
- 1.01.020 Title – Citation – Reference.
- 1.01.030 Definitions and construction.
- 1.01.040 Codification authority – Repeal – Exceptions.
- 1.01.050 Continuity of provisions.
- 1.01.060 Actions and proceedings continued.
- 1.01.070 Licenses and certificates continued.
- 1.01.080 Offices continued.
- 1.01.090 Reference.
- 1.01.110 Liberal construction.
- 1.01.120 Applicability of chapter.
- 1.01.130 Title, chapter and section headings.

1.01.140 Use of English language required.

1.01.150 Severability.

1.01.160 Time of day.

1.01.170 Liability.

1.01.180 Fees.

1.01.200 Savings Clause.

**1.01.010 Code adopted – Effective date.**

This code, as compiled from the ordinances of the City of Elk Grove, is the official code of the City. This code shall take effect at 12:00:01 a.m., Pacific Standard Time, on May 8, 2009 at which time this code shall be applicable and controlling with respect to all subjects included in this code in lieu of all ordinances which are superseded and replaced by this code. Three (3) copies of this code shall be permanently retained on file with the City Clerk for use and examination by the public.

**1.01.020 Title – Citation – Reference.**

This code shall be known as the “Elk Grove Municipal Code” or “EGMC”. It shall be sufficient to refer to this code as the “Elk Grove Municipal Code” or “EGMC” in any prosecution for violation of any provision of this code in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part of this code as an addition to, amendment to, correction of, or repeal of the “Elk Grove Municipal Code.” References to this code may be to the titles, chapters, sections and subsections of the “Elk Grove Municipal Code” and such reference shall apply to that numbered title, chapter, section or subsection as it appears in this code.

**1.01.030 Definitions and construction.**

Unless the context otherwise requires, the following words and phrases where used in this code shall have the meaning and construction given in this section:

A. “Across” includes along, in or upon;

B. “City” means the City of Elk Grove;

C. “City Council” means the City Council of the City of Elk Grove;

D. "Code" means the "Elk Grove Municipal Code";

E. "Day" means that whenever a number of days are specified in this Code the number of days shall be construed as calendar days unless otherwise stated as business days. When the last of the specified number of days falls on a weekend or City holiday, time limits shall extend to the end of the next business day;

F. "Ex-officio" means by virtue of office;

G. Gender. The masculine gender includes the feminine and neuter;

H. "Goods" includes wares and merchandise;

I. Number. The singular number includes the plural, and the plural includes the singular;

J. "Oath" includes affirmation;

K. "Operate" or "engage in" includes carry on, keep, conduct, maintain, or cause to be kept or maintained;

L. "Owner," when pertaining to a building or land, includes any part owner, joint owner, tenant in common, or joint tenant of the whole or part of such building or land;

M. "Person" means any natural person, firm, association, joint venture, joint stock company, partnership, club, company, corporation, business trust, or organization of any kind;

N. "Sale" includes any sale, exchange, barter or offer for sale;

O. "Shall" is mandatory, "may" is permissive;

P. "State" means the state of California;

Q. "Street" includes all streets, highways, public roads, county roads, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, parkways, or other public ways in the City of Elk Grove which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state;

R. "Tenant or occupant," when pertaining to a building or land, includes any person who occupies the whole or part of such building or land, whether alone or with others;

S. Tenses. The present tense includes the past and future tenses and the future tense includes the present tense;

T. Title of Office. The use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the City.

#### **1.01.040 Codification authority – Repeal – Exceptions.**

This code consists of all of the regulatory and penal ordinances and certain of the administrative ordinances codified pursuant to Sections 50020 et seq., inclusive, of the Government Code of the state, except for ordinances relating to rezoning, the granting of franchises, and certain other ordinances which were not considered appropriate for inclusion in the code.

#### **1.01.050 Continuity of provisions.**

The provisions of this code, insofar as they are substantially the same as previously existing ordinance provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

#### **1.01.060 Actions and proceedings continued.**

No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedures thereafter taken shall conform to the provisions of this code so far as possible.

#### **1.01.070 Licenses and certificates continued.**

Any rights given by license or certificate under any ordinance repealed by this code are not affected by the enactment of this code or by such repeal; but such rights shall hereafter be exercised according to this code.

#### **1.01.080 Offices continued.**

All persons who, at the time this code goes into effect, hold office under any of the ordinances repealed by this code, shall continue to hold the same according to the present tenure thereof.

#### **1.01.090 Reference.**

Whenever reference is made to any portion of this code or of any other law of the state, the reference applies to all amendments and additions now or hereafter made.

#### **1.01.110 Liberal construction.**

The provisions of the code shall be liberally construed to obtain its purposes and objects.

**1.01.120 Applicability of chapter.**

Unless the provision or the context otherwise requires, the general provisions, rules of construction, and definitions set forth in this chapter shall govern the construction of this code.

**1.01.130 Title, chapter and section headings.**

Title, chapter, and section headings do not govern, limit, modify or in any way affect the scope, meaning, or intent of the provisions of any title, chapter or section.

**1.01.140 Use of English language required.**

Except as may be otherwise required by law, whenever any notice, report, statement, or record is required by this code, it shall be made in the English language.

**1.01.150 Severability.**

If any provision of this code or the application thereof to any person or circumstances is held invalid, the remainder of the code, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

**1.01.160 Time of day.**

Whenever a certain hour or time of day is specified in this code such hour or time shall be Standard Time or Daylight Savings Time, whichever is in current use in the City.

**1.01.170 Liability.**

No provision of this code shall be construed as imposing upon the City any liability or responsibility for personal injury or property damage resulting from any activity or condition which arises or exists by virtue of any provision or requirement of this code, including construction, installation, or repair of any facility, equipment or property, or from any defect therein; nor shall the City or any officer or employee thereof be held as assuming any liability or responsibility by reason of any inspection authorized herein.

**1.01.180 Fees.**

Except as otherwise provided in this code, all fees collected herein shall be paid into the City Treasury.

**1.01.200 Savings Clause**

The provisions of this Code 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 affect; 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.

## **CHAPTER 1.02**

### **MUNICIPAL ELECTIONS**

Sections:

1.02.010 Date of General Municipal Election.

1.02.020 Candidate's Filing Fee.

1.02.030 Term of Office.

#### **1.02.010 Date of General Municipal Election.**

General Municipal Elections of the City of Elk Grove are to be consolidated with the statewide general elections to be held on the first Tuesday after the first Monday in November of each even-numbered year, in accordance with provisions of the California Elections Code.

#### **1.02.020 Candidate's Filing Fee.**

Pursuant to Section 10228 of the Elections Code there is imposed a filing fee proportionate to the costs of processing a candidate's nomination papers in the amount of Twenty-Five and no/100<sup>ths</sup> (\$25.00) Dollars to be paid upon the filing of such nomination papers.

#### **1.02.030 Term of Office.**

The term of an elected officer is four (4) years unless otherwise designated at nomination. Elected officers shall continue in office until the election results are certified by the Sacramento County Registrar of Voters and submitted to the City Council for adoption.



## **Chapter 1.04**

### **ENFORCEMENT OF CODE VIOLATION**

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. 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, 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/100<sup>ths</sup> (\$100.00) Dollars for a first violation.

2. A fine not exceeding Two Hundred and no/100<sup>ths</sup> (\$200.00) Dollars for a second violation of the same Code provision within a twelve (12) month period.
3. A fine not exceeding Five Hundred and no/100<sup>ths</sup> (\$500.00) Dollars for each additional violation of the same Code provision within a twelve (12) month period.
4. An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two (2) or more violations of the same Code provision within a twelve (12) 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. 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 if the violation is specifically identified in this Code as a misdemeanor. A misdemeanor is punishable by a fine not exceeding One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars, or imprisonment not exceeding six (6) 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 EGMC 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.

### **Chapter 1.06**

#### **JUDICIAL REVIEW OF CITY DECISIONS**

Sections:

1.06.010 State law applicable.

1.06.020 Judicial review – 90-day limit.

1.06.030 Record preparation – Costs.

#### 1.06.040 Notice.

#### **1.06.010 State law applicable.**

Pursuant to the provisions of Section 1094.6 of the Code of Civil Procedure, the provisions of said section are made applicable to the decisions of the of all commissions, boards, officers and agents of the City of Elk Grove, except where a limitation of actions is otherwise provided by this code.

#### **1.06.020 Judicial review – 90-day limit.**

Judicial review of any decision subject to the provisions of this chapter and Section 1094.6 of the Code of Civil Procedure may be had only if the petition for judicial review is filed within ninety (90) days after the decision becomes final; provided, that pursuant to the provisions of Section 1094.6(d) of the Code of Civil Procedure, if the petitioner files a request for the record within ten (10) days after the date the decision becomes final, the time within which a petition for judicial review may be filed shall be extended to not later than the thirtieth (30<sup>th</sup>) day following the date on which the record is either personally delivered or mailed by first class certified mail, return receipt requested, to the petitioner or his attorney of record, if he or she has one.

#### **1.06.030 Record preparation – Costs.**

A. As provided in said Section 1094.6, any person who requests preparation of the administrative record shall be responsible for payment of the actual costs of transcribing or otherwise preparing the record. Actual costs shall include, but not be limited to: the salary and fringe benefit rates of pay by the City to personnel for time consumed in typing a transcript and reproducing, assembling and compiling the transcript and exhibits; the unit cost (including prorated rental) of equipment utilized in reproduction; the cost of materials and supplies; and the cost to the City of having a transcript typed when testimony has been recorded by a court reporter. Each board, commission, officer, employee or agent whose decision will be subject to the limitations established by this chapter may, from time to time, by resolution in the case of such boards and commissions and by written order in the case of such officers, employees and agents, determine and promulgate unit costs of preparing the record.

B. Before commencing preparation of a transcript or other record, the officer or employee responsible for preparation shall estimate the actual total cost. Preparation of the record shall not be commenced until the person requesting preparation of the record has deposited the full amount of the cost estimate.

C. If the deposit exceeds the actual cost, the difference shall be refunded. If the actual cost exceeds the estimate, the difference shall be paid when the record is delivered.

D. The limitations of action period shall not be extended, pursuant to the provisions of Section 1094.6(d) of the Code of Civil Procedure or EGMC Section 1.06.020, beyond ninety (90) days after the decision becomes final, unless the petitioner deposits pursuant to the provisions of subsection (B) of this section the estimated actual total cost of preparing the transcript within ten (10) days after he has been furnished with the written estimate of such cost.

#### **1.06.040 Notice.**

Every written decision or notice thereof to which the provisions of this chapter and Section 1094.6 of the Code of Civil Procedure apply shall refer to and be accompanied, by attachment, by a copy of the provisions of this chapter.

### **Chapter 1.07**

#### **VOTING BY THE CITY COUNCIL**

Sections:

1.07.010 Voting by the City Council.

#### **1.07.010 Voting by the City Council.**

If action by the City Council is a tie vote on any matter arising out of EGMC Titles 20, 21, and 22, whether or not the matter is before the City Council on appeal, the City Council may, following the tie vote and in advance of adjournment of the meeting during which the tie vote occurred, continue the matter for further consideration and determination to a time and date certain not later than thirty (30) days following the date on which the tie vote occurred. If the matter is not continued for further consideration and determination in the manner specified above, such tie vote shall be deemed to constitute a denial or disapproval effective on the date the tie vote occurs of the matter for which application is made (and in the case of an appeal, denial of the action requested by the application, as distinguished from denial of the appeal), and such action shall be deemed to be final and not subject to reconsideration pursuant to the application upon which the vote was taken. If during the meeting to which consideration and determination is continued pursuant to this section another tie vote occurs, the application shall, effective on the date of such continued meeting, be deemed denied in the manner prescribed above and the action shall be deemed to be final in the manner

prescribed above. During the meeting to which consideration and determination is continued pursuant to this section, no new or additional evidence shall be received or considered unless any public hearing required by law has been reopened and any notice thereof required by law has been given.

## **CHAPTER 1.08**

### **ENFORCEMENT OF CODE**

Sections:

- 1.08.010 Code enforcement - General.
- 1.08.020 Criminal penalties-infractions and misdemeanors.
- 1.08.030 Prosecutorial discretion.
- 1.08.040 Imposition of Penalty.
- 1.08.050 Citation procedure.
- 1.08.060 Civil remedies-Injunction.
- 1.08.070 Administrative citations and penalties.
- 1.08.080 Public nuisance abatement.

#### **1.08.010 Code enforcement--General.**

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 the provisions of this Code by any one or more of the following methods, at the City's discretion:

- A. Criminal penalties, under EGMC Chapter 1.04;
- B. Civil injunction, under EGMC Section 1.08.060;
- C. Regarding land use and development, by the granting or denial of permits, the forfeiture and revocation of permits, or the recording of a notice of violation (See EGMC Title 23, Planning and Zoning, and EGMC Title 22, Subdivisions);
- D. Administrative citations and penalties, under EGMC Chapter 1.12;
- E. Public nuisance abatement, under EGMC Chapter 16.18;

F. Building abatement, under any of the uniform building Codes adopted by the City in EGMC Title 16, Building Regulations;

G. Any other lawful authority.

**1.08.020 Criminal penalties--Infractions and misdemeanors.**

A person who violates a provision of this Code is guilty of criminal violation (an infraction or a misdemeanor) as set forth in EGMC Chapter 1.04.

**1.08.030 Prosecutorial discretion.**

A violation may be prosecuted by the City Attorney or the District Attorney. In any case where a violation is made a misdemeanor, the prosecuting attorney has the discretion to charge the violation as an infraction.

**1.08.040 Imposition of penalty.**

When the Code declares a certain crime to be punishable as an infraction or a misdemeanor, the punishment to be imposed in a particular case must be determined by the court authorized to pass sentence, within the limits prescribed for an infraction or a misdemeanor, as the case may be. At the court's request, the City shall provide to the court a recommended bail schedule to apply to those people who elect a bail forfeiture. The recommended bail for a violation may be approved by the City Council or City Attorney, or both.

**1.08.050 Citation procedure.**

A. If a person is arrested for any violation of this Code and is not immediately taken before a magistrate, the citation procedures in Section 853.6 of the Penal Code shall apply.

B. It shall be unlawful, and a misdemeanor, for a person who is criminally cited for an infraction or a misdemeanor under this Code to refuse to sign a written promise to appear.

**1.08.060 Civil remedies--Injunction.**

A violation of this Code may be enforced by any civil remedy, including by a civil injunction. The City Attorney is authorized to initiate any appropriate civil action.

**1.08.070 Administrative citations and penalties.**

A person who violates a provision of this Code or who fails to comply with a mandatory requirement of this Code is subject to an administrative citation and penalty. The administrative citation procedures and penalties are set forth in EGMC Chapter 1.12.

### **1.08.080 Public nuisance abatement.**

Any condition caused or permitted to exist in violation of a provision of this Code is a public nuisance. The condition may be abated in accordance with the procedures set forth in EGMC Chapter 1.12 or other specific abatement procedures in this Code, or in accordance with the procedures set forth in the uniform Codes adopted under EGMC Title 16 (Building Regulations) if the condition constitutes a violation of one of those Codes.

## **Chapter 1.11**

### **APPEALS**

Sections:

- 1.11.010 Application.
- 1.11.020 Conflict with other chapters of the 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.
- 1.11.080 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 of violation 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 Municipal Code.**

To the extent this Chapter conflicts with any quasi-judicial appeal procedure 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 thirty (30) 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 (15<sup>th</sup>) 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) selected to hear the matter, the procedures for disqualification of an Appeals Hearing Officer, and any procedures applicable to the hearing, including notice of when written testimony must be submitted to the Appeals Hearing Officer.

#### **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.

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 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 peremptory challenge to disqualify an Appeals Hearing Officer without having to demonstrate actual bias, prejudice, interest, or other cause for disqualification. Rules and procedures for the disqualification of a hearing officer shall be promulgated by the City Attorney and ratified by the City Council. 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.

**1.11.080 Disqualification of Appeals Hearing Officer(s).**

An Appeals Hearing Officer shall disqualify himself or herself from serving as Appeals Hearing Officer in a particular matter where he or she has a conflict of interest within the meaning of the Political Reform Act (Government Code Sections 87100 et seq.) 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 Appeals Hearing Officer 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 of the parties to the hearing or if the Appeals Hearing Officer 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 shall subpoena witnesses, documents, and other evidence where the attendance of the witness of 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. The City Attorney shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs;

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 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 and the Appeals Hearing Officer 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, 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 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 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 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 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 shall be final and no appeal may be made to the City Council.

**1.11.150 Judicial review.**

Once an administrative order becomes final as provided in this chapter, any person directly aggrieved by the administrative decision rendered in that order may obtain 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 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 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.

## **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 Sections 53069.4 and 36901 of the Government Code.

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 EGMC Section 1.12.030.

#### **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, 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 EGMC Section 1.12.150. The notice shall be delivered personally or by first class certified mail, return receipt requested. 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 EGMC Section 1.12.030, 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 certified mail, return receipt requested, 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 re-inspections, 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 EGMC Section 1.11.090, 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 EGMC 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 or by first class certified mail, return receipt requested.

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 first class certified mail, return receipt requested, 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.

**TITLE 2**

**ADMINISTRATION AND PERSONNEL**

**Chapters:**

**2.04 City Council**

**2.09 Personnel Policies and Procedures**

**2.10 City Clerk**

**2.12 Youth Commission**

**2.14 Police Department**

**2.64 Unclaimed Property**

**Chapter 2.04**

**CITY COUNCIL**

**Sections:**

**2.04.010 Council Members' salaries.**

#### **2.04.010 Council Members' salaries.**

In accordance with the provisions of Section 36516 of the Government Code, the salary of the members of the City Council of the City of Elk Grove shall be in the amount as set forth in Section 36516 of the Government Code.

### **Chapter 2.09**

#### **PERSONNEL POLICIES AND PROCEDURES**

Sections:

2.09.010 Personnel policies and procedures.

#### **2.09.010 Personnel policies and procedures.**

The City Manager has the responsibility and authority to ensure that proper personnel policies and procedures are in place for the efficient and effective running of the City and can modify or amend said policies as he or she deems necessary. For purposes of this section, policies and procedures includes defining and implementing premium pay practices, but does not include salary range setting, which is subject to approval of the City Council.

### **Chapter 2.10**

#### **CITY CLERK**

Sections:

2.10.010 Purpose and authority.

2.10.020 Office of City Clerk.

#### **2.10.010 Purpose and authority.**

The purpose of this chapter is to define the responsibilities of the Office of the City Clerk of the City of Elk Grove.

## **2.10.020 Office of City Clerk.**

The City Council hereby defines the responsibilities of the Office of City Clerk of the City of Elk Grove as follows:

A. Appointment of City Clerk. The City Clerk shall be appointed by the City Council wholly on the basis of his or her ability and qualifications and shall hold office at the pleasure of the Council.

B. Compensation. The City Clerk shall receive such salary and benefits as set by separate agreement between the City and City Clerk, and approved by resolution.

C. Qualifications. The qualifications for the Office of the City Clerk shall be consistent with those defined in the City Clerk classification description as recorded by Human Resources.

D. Powers and Duties Generally. The City Clerk shall be responsible for the efficient administration of City Clerk duties as prescribed by law, and as otherwise provided in this chapter or by direction of the City Council. The City Clerk shall have the following additional specific duties, responsibilities and powers:

1. To attend all meetings of the City Council unless excused therefrom by the Mayor individually or the City Council.

2. To perform such other duties and exercise such other powers as may be delegated to the City Clerk from time to time by ordinance or resolution or other official action of the City Council.

E. Relations with Council. The City Council and its members shall address the administration of duties of the Office of the City Clerk only through the City Clerk except for the purpose of inquiry and neither the City Council nor any member thereof shall give orders to any subordinates of the City Clerk. The City Clerk shall take orders and instructions from the City Council, only when the City Council is sitting in a duly convened meeting of the City Council. No individual Council Member shall give any orders or instructions to the City Clerk or any subordinate of the City Clerk, with the exception of direction from the Mayor regarding items to appear on agendas for meetings of the City Council.

F. Departmental Cooperation. It shall be the duty of the City Attorney, the City Manager and his or her subordinates to assist the City Clerk in development of City Council agendas and otherwise supporting the administration of the affairs of the Office of the City Clerk.

G. Performance Evaluation. Performance evaluations of the City Clerk shall be conducted by the City Council on an annual basis or with greater frequency at the pleasure of the Council.

H. Removal. The City Clerk shall at all times serve at the pleasure of the City Council and may be removed from office with or without cause, at any time, except that the City Clerk shall not be removed from office, nor shall notice of removal be determined, during or within a period of ninety (90) days next succeeding any municipal election held in the City at which a member of the City Council is elected. The purpose of this provision is to allow any newly elected member to the City Council or a reorganized City Council to observe the actions and ability of the City Clerk in the performance of the Office of City Clerk.

I. Agreements with Council Not Abridged. Nothing in this chapter shall be construed as a limitation on the power or authority of the City Council to enter into any agreement with the City Clerk delineating additional terms and conditions of employment. The terms and conditions of any employment agreement may be inconsistent with, and supersede, this chapter only if expressly provided for in the agreement.

## **CHAPTER 2.12**

### **YOUTH COMMISSION**

Sections:

2.12.010 Established.

2.12.020 Membership.

2.12.030 Term Limits.

2.12.040 Meetings.

2.12.050 Rules and records.

2.12.060 Duties and responsibilities.

#### **2.12.010 Established.**

A. The Youth Commission of the City, hereinafter referred to in this Chapter as the "commission," is created.

B. The Youth Commission is a standing commission.

**2.12.020 Membership.**

A. The commission shall consist of ten (10) members, five (5) voting members and five (5) alternates. An alternate can vote in place of the member if the member is not present, or cannot perform his or her duties. At time of appointment each voting member and alternate shall: 1) be no less than thirteen (13) years of age and no more than eighteen (18) years of age; 2) a student in grades 7 through 12, in an approved education program for middle school or high school students; and 3) a resident of the city or its sphere of influence, at the time of application for appointment and continuously thereafter. Immediate family members of City Council Members shall not be eligible for appointment.

B. Each member of the City Council shall appoint two (2) members to the commission from their district. One will be a voting member and one will be an alternate.

**2.12.030 Term Limits.**

A. Members of the commission shall serve for a two (2) year term. No person appointed as a commissioner or alternate shall be eligible to serve more than two (2) consecutive terms (a total of four (4) years).

B. The commission shall select a Chair and Vice Chair from among its members. Vice Chair will resume Chair responsibilities when Chair is absent. If Chair and Vice Chair are both absent, their respective alternates will resume their positions while they are absent. The term of these offices shall be one (1) year.

**2.12.040 Meetings.**

A. The commission shall schedule at least one (1) meeting per month at a designated time and place.

B. A majority of members shall constitute a quorum at any regular or special meeting of the commission.

C. The Youth Services Manager, or his or her designee, will provide support to the commission.

**2.12.050 Rules and records.**

Minutes of the commission shall be prepared by the Youth Services Manager or appointee, filed with the City Clerk's Office, and shall be a public record.

### **2.12.060 Duties and responsibilities.**

The tasks outlined below lay the foundation of the commission and provide a guide of expectations of each commissioner by the Council. These tasks are to be considered the charge and direction of the City Council.

- A. Develop and maintain a three (3) year action plan outlining areas for study by the commission.
- B. Review issues relating to programs and services for children and youth.
- C. Identify and recommend priorities among programs and services for children and youth.
- D. Create a forum for discussion with children, youth and their families.
- E. Advocate for services and programs for children and youth.
- F. Make recommendations for programs, policies, and necessary legislation to promote the health and well-being of children, youth and their families.
- G. Work with the public and private sectors to bring forth the concerns of children and youth as well as evaluate programming that will enhance the development of children and youth.
- H. Develop a communication network to disseminate information about services to children and youth.
- I. Submit a quarterly report to the Mayor and City Council.
- J. Meet with their respective Councilmember once a month.

### **Chapter 2.14**

#### **POLICE DEPARTMENT**

Sections:

2.14.010 Purpose and authority.

2.14.020 Participation in POST programs.

2.14.030 Authorization to deputize qualified persons as auxiliary or reserve officers.

#### **2.14.010 Purpose and authority.**

The purpose of this chapter is to make the City eligible for aid from the Commission on Police Officer Standards and Training and to give the Chief of Police and City Manager authority to appoint reserve officers. The authority for EGMC Section 2.14.020 is Section 13500 et seq. of the Penal Code, the section related to the Commission on Police Officer Standards and Training. The authority for EGMC Section 2.14.030 is Section 830 et seq. of the Penal Code, which section covers many topics, including appointment and powers of reserve City Police Officers.

#### **2.14.020 Participation in POST programs.**

A. The City Council of the City of Elk Grove hereby declares that it desires to qualify to receive aid from the state of California under the provisions of Section 13522, Chapter 1, Title 4, Part 4 of the California Penal Code.

B. The City Council of the City of Elk Grove hereby ordains that while receiving any state aid pursuant to Title 4, Chapter 1, commencing with Section 13500 of the California Penal Code, Commission on Peace Officer Standards and Training, the City of Elk Grove will adhere to the standards for recruitment and training and all Commission regulations as specified in POST Administrative Manual (Section B) established by the Commission and the California Code of Regulations as they pertain to City of Elk Grove Peace Officers.

C. The City Council of the City of Elk Grove hereby further ordains that while receiving any state aid pursuant to Title 4, Chapter 1, commencing with Section 13500 of the California Penal Code, Commission on Peace Officer Standards and Training, the City of Elk Grove will adhere to the standards for recruitment and training and all Commission regulations as specified in POST Administrative Manual (Section B) established by the Commission and the California Code of Regulations as they pertain to City of Elk Grove Local Public Safety Dispatchers.

D. The City Council of the City of Elk Grove hereby further ordains that the City's Police Department and its dispatch center shall allow the Commission and its representatives to make inquiries and inspect records as may be necessary to verify claims for reimbursement or to confirm whether the department or dispatch center is, in fact, adhering to Commission regulations.

#### **2.14.030 Authorization to deputize qualified persons as auxiliary or reserve officers.**

The Chief of Police of the City of Elk Grove, with the concurrence of the City Manager, is hereby empowered to deputize qualified persons so as to designate persons as



auxiliary or reserve City Police Officers, pursuant to Section 832.6 of the Penal Code. Those persons appointed by the Chief, with the concurrence of the City Manager, who are qualified as Level I Reserve Officers, shall have the full powers and duties of a Peace Officer as provided in Section 830.1 of the Penal Code, or limited powers as determined by the Chief of Police.

## **Chapter 2.64**

### **UNCLAIMED PROPERTY**

Sections:

2.64.010 Unclaimed property – Definition.

2.64.020 Storage and holding period of unclaimed property.

2.64.030 Restitution of unclaimed property to owner.

2.64.040 Return of lost property to finder.

2.64.050 Quick sale of unclaimed property in danger of perishing, etc. – Donation to nonprofit organization.

2.64.060 Transfer of unclaimed property to auction company for sale.

2.64.070 Sale of unclaimed property at public auction.

2.64.080 Publication of notice of intention to sell unclaimed property.

2.64.090 Time and manner of sale of unclaimed property.

2.64.100 Disposition of proceeds from sale of unclaimed property.

2.64.110 Unclaimed property remaining after sale – Report to City Manager – Disposition.

#### **2.64.010 Unclaimed property – Definition.**

“Unclaimed property,” as used in this chapter, means personal property that does not belong to the City that is taken into the possession of the Elk Grove Police Department or left in its possession or turned over to it by a person who found or saved the same, except:

A. Property subject to confiscation by law enforcement under the laws of the City of Elk Grove, state of California, or of the United States; and

B. Vehicles, the storage, sale or other disposition of which is governed by the provisions of the State Vehicle Code.

**2.64.020 Storage and holding period of unclaimed property.**

Except as otherwise provided in this chapter, all unclaimed property in the possession of the Police Department shall be held and stored by the Chief of Police for a period of at least ninety (90) days.

**2.64.030 Restitution of unclaimed property to owner.**

Subject to the provisions of EGMC Sections 2.64.040 through 2.64.060, the Chief of Police shall restore unclaimed property in the possession of the Police Department to its legal owner upon proof of such ownership and upon the payment of all reasonably necessary costs incurred in the care and protection thereof, and any cost of publication. Where any such property may be needed or required as evidence in any criminal proceeding, the Chief of Police shall delay the restoration of such property to its legal owner until the conclusion of such proceeding. If such property is introduced as evidence in a criminal case, it shall be disposed of only upon court order. If the legal owner is a person prohibited by law from possessing such property, restitution shall not be made.

**2.64.040 Return of lost property to finder.**

A. When lost personal property is found or saved and is turned over to the Police Department in accordance with the provisions of Section 2080.1 of the Civil Code or otherwise, and no owner appears and proves ownership of such property within ninety (90) days thereafter, the Police Department shall, if such property is of a value of Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars or more, cause to be published at least once in a newspaper of general circulation notice of the found or saved property. If, after seven (7) days following the first publication of the notice, no owner appears and proves ownership of the property, the property shall be returned to the finder on payment of all reasonable charges, including cost of publication. The Police Department may require the finder to deposit with it an amount sufficient to cover the cost of publication before proceeding with publication.

B. Where such property is of a value of less than Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars , and no owner appears and proves ownership within ninety (90) days, title shall vest in the finder without publication of notice.

C. The provisions of this section shall not apply where the property was found or saved in the course of employment by an employee of any public agency or where the finder is a person prohibited by law from possessing such property.

**2.64.050 Quick sale of unclaimed property in danger of perishing, etc. – Donation to nonprofit organization.**

Notwithstanding any other provision of this chapter:

A. When any unclaimed property in the possession of the Police Department is in danger of perishing, or of losing the greater part of its value, or when the reasonably necessary costs incurred in the care and protection of any such property amount to two-thirds (0.67) of its value, the Police Department may sell such property by public auction in the manner and upon the notice of sale of personal property under execution, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, refuses upon demand to pay the reasonably necessary costs incurred in the care and protection thereof.

B. Any unclaimed property with a value of not more than Five Hundred and no/100<sup>ths</sup> (\$500.00) Dollars which has been unclaimed for a period of at least ninety (90) days may, instead of being sold at public auction, be donated to any charitable or nonprofit organization operating within the City, which is authorized under its articles of incorporation to participate in a program or activity designed to prevent juvenile delinquency, benefit senior citizens or victims of domestic violence, and which is exempt from income taxation under federal or state law, or both, for use in any program or activity designed to prevent juvenile delinquency, benefit senior citizens or victims of domestic violence. Before any such property is donated to any such charitable or nonprofit organization, the Police Department shall obtain approval from the City Manager or his designee, and shall notify the owner, if his or her identity is known or can be reasonably ascertained, that it possesses the property, and where the property may be claimed. The owner may be notified by mail, telephone, or by means of a notice published in a newspaper of general circulation which it determines is most likely to give notice to the owner of the property.

**2.64.060 Transfer of unclaimed property to auction company for sale.**

All unclaimed property in the possession of the Police Department that is not disposed of in accordance with other provisions of this chapter shall be transferred after expiration of at least the minimum applicable holding period to an auction company. Once auction of the property has commenced it cannot be redeemed by anyone.

#### **2.64.070 Sale of unclaimed property at public auction.**

All unclaimed property offered for sale at public auction shall be sold to the highest bidder except as follows:

A. Unclaimed property having no monetary value shall be destroyed unless it can be disposed of in the public interest or utilized pursuant to subsection (C) of this section;

B. Unclaimed property of a type or kind for which a permit or license to sell the same is required by state or federal law shall be destroyed unless it can be disposed of in the public interest or utilized pursuant to subsection (C) of this section; and

C. Unclaimed property determined by the Purchasing Division to be needed for use by the City or other public use shall be retained.

#### **2.64.080 Publication of notice of intention to sell unclaimed property.**

Before offering any unclaimed property for sale, auction companies or the Police Department shall publish at least once in a newspaper of general circulation a notice of its intention to sell such unclaimed property at public auction to the highest bidder at a specific time and place.

#### **2.64.090 Time and manner of sale of unclaimed property.**

All sales of unclaimed property by auction companies or the Police Department shall be held not less than five (5) business days after publication of the notice of intention to sell in a newspaper of general circulation. Items shall be sold at public auction to the highest bidder. Where the particular item offered for sale is one which certain persons are prohibited by law from possessing, using, or consuming, such persons shall not be permitted to participate in the bidding on such items.

#### **2.64.100 Disposition of proceeds from sale of unclaimed property.**

Proceeds received from the sale of unclaimed property shall be delivered to the Finance Director for deposit in the appropriate fund, as determined by the Finance Department.

#### **2.64.110 Unclaimed property remaining after sale – Report to City Manager – Disposition.**

The Purchasing Manager shall report to the City Manager any unclaimed property remaining unsold after a public auction. The City Manager shall instruct the Finance Director regarding the disposition of such property as he or she sees fit in the public interest.

## **TITLE 3**

### **REVENUE AND TAXATION**

#### **Chapters:**

**3.04 Uniform Sales and Use Tax**

**3.08 Uniform Transient Occupancy Tax**

**3.12 Real Property Transfer Tax**

**3.14 East Franklin Community Facilities District No. 2002-1 Special Tax**

**3.16 Community Facilities District No. 2003-1 Special Tax**

**3.18 Community Facilities District No. 2003-2 Special Tax**

**3.19 Community Facilities District No. 2006-1 Special Tax**

**3.20 Capital Outlay Fund**

**3.21 Community Facilities District No. 2005-1 Special Tax**

**3.24 Special Gas Tax Street Improvement Fund**

**3.30 City Fees, Charges, Rates and Assessments**

**3.32 California Land Conservation Contracts**

**3.40 Utility User Tax**

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#### **Chapter 3.04**

### **UNIFORM SALES AND USE TAX**

#### **Sections:**

**3.04.010 Short title.**

**3.04.020 Rate.**

- 3.04.030 Operative date.
- 3.04.040 Purpose.
- 3.04.050 Contract with state.
- 3.04.060 Sales tax.
- 3.04.070 Place of sale.
- 3.04.080 Use tax.
- 3.04.090 Adoption of provisions of state law.
- 3.04.100 Limitations on adoption of state law.
- 3.04.110 Permit not required.
- 3.04.120 Exclusions and exemptions.
- 3.04.130 Amendments.
- 3.04.140 Enjoining collection forbidden.
- 3.04.150 Penalties.

**3.04.010 Short title.**

This chapter shall be known as the “uniform local sales and use tax ordinance.”

**3.04.020 Rate.**

The rate of sales tax and use tax imposed by this chapter shall be one (1%) percent.

**3.04.030 Operative date.**

This chapter shall be operative on October 1, 2000.

**3.04.040 Purpose.**

The City Council hereby declares that the ordinance codified in this chapter is adopted to achieve the following, among other, purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To adopt a sales and use tax ordinance which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

B. To adopt a sales and use tax ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the state of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code;

C. To adopt a sales and use tax ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes;

D. To adopt a sales and use tax ordinance which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting City sales and use taxes and at the same time minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this chapter.

**3.04.050 Contract with state.**

Prior to the operative date the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this chapter; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract rather than the first date of the first calendar quarter following the adoption of the ordinance codified in this chapter.

**3.04.060 Sales tax.**

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers in the City at the rate stated in EGMC Section 3.04.020 of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date.

**3.04.070 Place of sale.**

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of

business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

**3.04.080 Use tax.**

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in the City at the rate stated in EGMC Section 3.04.020 of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

**3.04.090 Adoption of provisions of state law.**

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

**3.04.100 Limitations on adoption of state law.**

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the Constitution of the state of California is named or referred to as the taxing agency, the name of the City shall be substituted therefor. The substitution, however, shall not be made when the word "State" is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, the State Treasury, or the Constitution of the state of California; the substitution shall not be made when the result of that substitution would require action to be taken by or against the City or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; the substitution shall not be made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provisions of that code; the substitution shall not be made in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code; and the substitution shall not be made for the word "state" in the phrase "retailer



engaged in business in this state” in Section 6203 or in the definition of that phrase in Section 6203.

**3.04.110 Permit not required.**

If a seller’s permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional seller’s permit shall not be required by this chapter.

**3.04.120 Exclusions and exemptions.**

A. The amount subject to tax shall not include any sales or use tax imposed by the state of California upon a retailer or consumer.

B. The storage, use, or other consumption of the tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

D. In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government is exempted from the use tax.

**3.04.130 Amendments.**

All subsequent amendments of Part 1 of Division 2 of the Revenue and Taxation Code which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become part of this chapter. This chapter also shall be deemed to adopt by reference the provisions of Sections 7202 to 7203, inclusive, of the Revenue and Taxation Code, as now in effect or as later amended, which are required to be included in this chapter.

### **3.04.140 Enjoining collection forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or this City, or against any officer of the state or this City, to prevent or enjoin the collection under this chapter, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

### **3.04.150 Penalties.**

Any person violating any of the provisions of this chapter shall be subject to the punishments set forth in EGMC Chapter 1.04.

## **Chapter 3.08**

### **UNIFORM TRANSIENT OCCUPANCY TAX**

Sections:

3.08.010 Short title.

3.08.020 Definitions.

3.08.030 Imposed.

3.08.040 Exemptions.

3.08.050 Operator's duties.

3.08.060 Registration.

3.08.070 Reporting and remitting.

3.08.080 Uncollectible accounts.

3.08.090 Penalties – Interest.

3.08.100 Determination of tax – Failure to collect and report.

3.08.110 Appeal.

3.08.120 Records.

3.08.130 Refunds.

3.08.140 Actions to collect.

### 3.08.150 Penalty for violations.

#### **3.08.010 Short title.**

This chapter shall be known as the “uniform transient occupancy tax ordinance of the City of Elk Grove.”

#### **3.08.020 Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. “Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio, hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

B. “Occupancy” means the use or possession, or the right to the use or possession, of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

C. “Operator” means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purpose of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

D. “Rent” means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

E. “Tax and License Collector” means the City Manager or the City Manager’s designee.

F. “Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) days or less, counting portions of days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty

(30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.

#### **3.08.030 Imposed.**

A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve (12%) percent of the rent charged by the operator.

B. The tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax and License Collector may require that such tax shall be paid directly to the Tax and License Collector.

#### **3.08.040 Exemptions.**

A. No tax shall be imposed upon any person as to whom or any occupancy as to which it is beyond the power of the City to impose the tax herein provided.

B. Charges incurred by a person in the performance of official duties as an employee of City, county, state and federal governmental entities shall be exempt from the tax herein provided if an exemption certificate is submitted and payment is made either:

1. Directly to the hotel for rentals; or
2. By government-sponsored corporate charge card.

C. No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax and License Collector.

#### **3.08.050 Operator's duties.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded, except in the manner hereinafter provided.

### **3.08.060 Registration.**

Within sixty (60) days after the effective date of the ordinance codified in this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the Tax and License Collector and obtain from him a transient occupancy registration certificate which shall be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, include the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;
- D. The following statement:

This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the uniform transient occupancy tax by registering with the Tax and License Collector for the purpose of collecting from transients the transient occupancy tax and remitting the tax to the Tax and License Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any unlawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit.

### **3.08.070 Reporting and remitting.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax and License Collector, make a return to the Tax and License Collector, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax and License Collector. The Tax and License Collector may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment thereof is made to the Tax and License Collector.

### **3.08.080 Uncollectible accounts.**

Any operator is relieved from liability for the remission to the City of the tax imposed under this chapter insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes. If the operator has previously remitted the tax, he or she may, pursuant to procedures prescribed by the Tax and License Collector, take as a deduction the amount of tax previously remitted for the worthless and charged-off account. If any such accounts are thereafter in whole or in part collected by the operator, the amount so collected shall be included in the first return filed after such collection and the tax on such amount paid with the return.

### **3.08.090 Penalties – Interest.**

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10%) percent of the amount of the tax in addition to the amount of the tax and the ten (10%) percent penalty first imposed.

C. Fraud. If the Tax and License Collector determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25%) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B) of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one (0.5%) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

### **3.08.100 Determination of tax – Failure to collect and report.**

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Tax and License Collector shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of

the tax due. As soon as the Tax and License Collector shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax and License Collector shall give notice of the amount so assessed by serving it personally or by first class certified mail, return receipt requested, addressed to the operator so assessed at his or her last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax and License Collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax and License Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax and License Collector shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the Tax and License Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in EGMC Section 3.08.110.

**3.08.110 Appeal.**

Any operator aggrieved by any decision of the Tax and License Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal pursuant to EGMC Chapter 1.11.

**3.08.120 Records.**

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the City, which records the Tax and License Collector shall have the right to inspect at all reasonable times.

**3.08.130 Refunds.**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under

this chapter, it may be refunded as provided in subsections (B) and (C) of this section; provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax and License Collector within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax and License Collector.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax and License Collector that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City for filing a claim in the manner provided in subsection (A) of this section, but only when the tax was paid by the transient directly to the Tax and License Collector, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax and License Collector that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

#### **3.08.140 Actions to collect.**

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

#### **3.08.150 Penalty for violations.**

A. Any person violating any of the provisions of this chapter shall be subject to the punishments set forth in EGMC Chapter 1.04.

B. Any operator or other person who fails or refuses to register as required herein or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the Tax and License Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes any



false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid.

## **Chapter 3.12**

### **REAL PROPERTY TRANSFER TAX**

Sections:

3.12.010 Short title.

3.12.020 Tax imposed.

3.12.030 Paid by whom.

3.12.040 Securing debt exempt.

3.12.050 Governmental agencies exempt.

3.12.060 Reorganization or adjustment exempt.

3.12.070 Securities and Exchange Commission orders exempt.

3.12.080 Partnerships exempt.

3.12.090 Administration.

3.12.100 Claims for refund.

#### **3.12.010 Short title.**

This chapter shall be known as the "real property transfer tax law of the City of Elk Grove." It is adopted pursuant to the authority contained in Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code of the state of California.

#### **3.12.020 Tax imposed.**

There is imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the City shall be granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her or their direction when the consideration or value of the interest or property

conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars a tax at the rate of Twenty-Seven and One Half cents (\$0.275) for each Five Hundred and no/100<sup>ths</sup> (\$500.00) Dollars, or fractional part thereof.

**3.12.030 Paid by whom.**

Any tax imposed pursuant to this chapter shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued.

**3.12.040 Securing debt exempt.**

Any tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt.

**3.12.050 Governmental agencies exempt.**

The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia shall not be liable for any tax imposed pursuant to this chapter with respect to any deed, instrument, or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor.

**3.12.060 Reorganization or adjustment exempt.**

A. Any tax imposed pursuant to this chapter shall not apply to making, delivering or filing of conveyances to make effective any plan of organization or adjustment:

1. Confirmed under the Federal Bankruptcy Act, as amended;
2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;
3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or
4. Whereby a mere change in identity, form or place of organization is effected.

B. The provisions of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five (5) years from the date of such confirmation, approval or change.

### **3.12.070 Securities and Exchange Commission orders exempt.**

Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954, but only if:

- A. The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;
- B. Such order specifies the property which is ordered to be conveyed; and
- C. Such conveyance is made in obedience to such order.

### **3.12.080 Partnerships exempt.**

A. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise if:

- 1. Such partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and
- 2. Such continuing partnership continues to hold the realty concerned.

B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for the purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereof), all realty held by such partnership at the time of such termination.

C. No more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (B) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

### **3.12.090 Administration.**

The Finance Director shall transmit all appropriate materials to the Sacramento County Clerk-Recorder who shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any City ordinance adopted pursuant thereto.

### **3.12.100 Claims for refund.**

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the State Revenue and Taxation Code.

## **Chapter 3.14**

### **EAST FRANKLIN COMMUNITY FACILITIES DISTRICT NO. 2002-1 SPECIAL TAX**

Sections:

3.14.010 Findings.

3.14.020 Levy of special tax.

3.14.030 Collection of special tax.

3.14.040 Claims for refund.

#### **3.14.010 Findings.**

The City Council has established the East Franklin Community Facilities District No. 2002-1 (the "District") pursuant to Resolution No. 2002-81 (the "Resolution of Formation"), duly adopted on May 15, 2002, for the purpose of providing for the financing of certain public facilities in and for the City.

At an election held in the District on May 15, 2002, the qualified electors of the District authorized the levy of the special tax described in the Resolution of Formation.

The foregoing recitals are true and correct.

#### **3.14.020 Levy of special tax.**

Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution of Formation.

#### **3.14.030 Collection of special tax.**

Pursuant to Section 53340 of the California Government Code and the Resolution of Formation, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien

priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

#### **3.14.040 Claims for refund.**

Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

A. All claims shall be filed, in writing, with the Finance Director during the fiscal year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

B. Pursuant to Section 935(b) of the Government Code, the claim shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

C. The City Council shall act on a timely claim within the time period required by Section 912.4 of the Government Code.

D. The procedure described in this chapter, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

### **Chapter 3.16**

#### **COMMUNITY FACILITIES DISTRICT NO. 2003-1 SPECIAL TAX**

Sections:

3.16.010 Levy of special tax.

3.16.020 Collection of special tax.

3.16.030 Claims for refund.

#### **3.16.010 Levy of special tax.**

Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution on all parcels as set forth below:

- A. Ord. 1-2003 establishes tax;
- B. Ord. 19-2004 adds Annexation 1 to District No. 2003-1 and levies tax;
- C. Ord. 17-2005 adds Annexation 2 to District No. 2003-1 and levies tax.

**3.16.020 Collection of special tax.**

Pursuant to Section 53340 of the California Government Code and the Resolution, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

**3.16.030 Claims for refund.**

Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

- A. All claims shall be filed, in writing, with the Finance Director during the fiscal year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.
- B. Pursuant to Section 935(b) of the Government Code, the claim shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.
- C. The City Council shall act on a timely claim within the time period required by Section 912.4 of the Government Code.
- D. The procedure described in this chapter, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

**Chapter 3.18**

**COMMUNITY FACILITIES DISTRICT NO. 2003-2 SPECIAL TAX**

Sections:

- 3.18.010 Levy of special tax.

3.18.020 Collection of special tax.

3.18.030 Claims for refund.

**3.18.010 Levy of special tax.**

Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution on all parcels as set forth below:

- A. Ord. 41-2003 establishes tax;
- B. Ord. 9-2004 adds Annexation 1 to District No. 2003-2 and levies tax;
- C. Ord. 20-2004 adds Annexation 2 to District No. 2003-2 and levies tax;
- D. Ord. 29-2004 adds Annexation 3 to District No. 2003-2 and levies tax;
- E. Ord. 2-2005 adds Annexation 4 to District No. 2003-2 and levies tax;
- F. Ord. 18-2005 adds Annexation 5 to District No. 2003-2 and levies tax;
- G. Ord. 25-2005 adds Annexation 6 to District No. 2003-2 and levies tax;
- H. Ord. 36-2005 adds Annexation 7 to District No. 2003-2 and levies tax;
- I. Ord. 37-2005 adds Annexation 8 to District No. 2003-2 and levies tax;
- J. Ord. 43-2005 adds Annexation 9 to District No. 2003-2 and levies tax;
- K. Ord. 12-2006 adds Annexation 10 to District No. 2003-2 and levies tax;
- L. Ord. 30-2006 adds Annexation 11 to District No. 2003-2 and levies tax;
- M. Ord. 39-2006 adds Annexation 12 to District No. 2003-2 and levies tax;
- N. Ord. 33-2007 adds Annexation 13 to District No. 2003-2 and levies tax;
- O. Ord. 38-2007 adds Annexation 14 to District No. 2003-2 and levies tax;
- P. Ord. 30-2008 adds Annexation 15 to District No. 2003-2 and levies tax.

### **3.18.020 Collection of special tax.**

Pursuant to Section 53340 of the California Government Code and the Resolution, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

### **3.18.030 Claims for refund.**

Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

A. All claims shall be filed, in writing, with the Finance Director during the fiscal year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

B. Pursuant to Section 935(b) of the Government Code, the claim shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

C. The City Council shall act on a timely claim within the time period required by Section 912.4 of the Government Code.

D. The procedure described in this chapter, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

## **Chapter 3.19**

### **COMMUNITY FACILITIES DISTRICT NO. 2006-1 SPECIAL TAX**

Sections:

3.19.010 Levy of special tax.

3.19.020 Collection of special tax.

3.19.030 Claims for refund.



### **3.19.010 Levy of special tax.**

Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution on all parcels as set forth below:

- A. Ord. 15-2006 establishes tax;
- B. Ord. 27-2006 adds Annexation 1 to District No. 2006-1 and levies tax;
- C. Ord. 31-2006 adds Annexation 2 to District No. 2006-1 and levies tax;
- D. Ord. 38-2006 adds Annexation 3 to District No. 2006-1 and levies tax;
- E. Ord. 47-2006 adds Annexation 4 to District No. 2006-1 and levies tax;
- F. Ord. 16-2007 adds Annexation 5 to District No. 2006-1 and levies tax;
- G. Ord. 20-2007 adds Annexation 6 to District No. 2006-1 and levies tax;
- H. Ord. 32-2007 adds Annexation 7 to District No. 2006-1 and levies tax;
- I. Ord. 8-2008 adds Annexation 8 to District No. 2006-1 and levies tax;
- J. Ord. 29-2008 adds Annexation 9 to District No. 2006-1 and levies tax;
- K. Ord. 46-2008 adds Annexation 10 to District No. 2006-1 and levies tax;
- L. Ord. 54-2008 adds Annexation 11 to District No. 2006-1 and levies tax.

### **3.19.020 Collection of special tax.**

Pursuant to Section 53340 of the California Government Code and the Resolution, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

### **3.19.030 Claims for refund.**

Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

A. All claims shall be filed, in writing, with the Finance Director during the fiscal year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

B. Pursuant to Section 935(b) of the Government Code, the claim shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

C. The City Council shall act on a timely claim within the time period required by Section 912.4 of the Government Code.

D. The procedure described in this chapter, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

## **Chapter 3.20**

### **CAPITAL OUTLAY FUND**

Sections:

3.20.010 Fund created.

3.20.020 Purpose.

3.20.030 Method of raising funds.

3.20.040 Transfer of funds.

3.20.050 Transferral from library fund.

3.20.060 Uses limited.

For statutory provisions authorizing a capital outlay fund and providing the method of its administration, see Section 53731 et seq. of the Government Code.

### **3.20.010 Fund created.**

There is hereby created a fund known as the "capital outlay construction fund," in accordance with the provisions of Sections 53731 and 53737 of the Government Code.

### **3.20.020 Purpose.**

The fund shall be an accumulation of monies for future expenditures for capital outlays.

### **3.20.030 Method of raising funds.**

Funds for the capital outlay fund may be raised as part of the tax levy for the general fund appropriation for City construction, in such amounts as the City Council may approve from year to year. The amounts so raised shall be transferred from the City construction fund to the capital outlay fund.

### **3.20.040 Transfer of funds.**

The City Council may transfer to said fund any unencumbered surplus funds remaining on hand at the end of any fiscal year.

### **3.20.050 Transferral from library fund.**

All funds now in the library fund, or which may be raised for said fund pursuant to the provisions of Section 27263 of the Education Code, are hereby transferred to the capital outlay construction fund, but such funds shall be used and expended solely for the purposes authorized by Section 27263.

### **3.20.060 Uses limited.**

The capital outlay fund shall remain inviolate for the making of capital outlays, including site acquisition, site development, architectural services, inspection services, engineering services, construction, reconstruction and alterations, and no monies shall be disbursed therefrom except for such purposes.

## **Chapter 3.21**

### **COMMUNITY FACILITIES DISTRICT NO. 2005-1 SPECIAL TAX**

Sections:

3.21.010 Levy of special tax.

3.21.020 Collection of special tax.

### 3.21.030 Claims for refund.

#### **3.21.010 Levy of special tax.**

Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution on all parcels as set forth below:

A. Ord. 11-2006 establishes tax.

#### **3.21.020 Collection of special tax.**

Pursuant to Section 53340 of the California Government Code and the Resolution of Formation, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.

#### **3.21.030 Claims for refund.**

Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:

A. All claims shall be filed, in writing, with the Finance Director during the fiscal year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.

B. Pursuant to Section 935(b) of the Government Code, the claim shall be subject to the provisions of Sections 945.6 and 946 of the Government Code.

C. The City Council shall act on a timely claim within the time period required by Section 912.4 of the Government Code.

D. The procedure described in this chapter, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.

## **Chapter 3.24**

### **SPECIAL GAS TAX STREET IMPROVEMENT FUND**

Sections:

3.24.010 Fund created.

3.24.020 Source of fund.

3.24.030 Expenditures.

#### **3.24.010 Fund created.**

In accordance with the provisions of Section 2113 of the Streets and Highways Code, there is hereby created in the City Treasury a special fund to be known as the "special gas tax street improvement fund."

#### **3.24.020 Source of fund.**

All monies received by the City from the state of California under the provisions of the Streets and Highways Code for the acquisition of real property or interest therein for, or for engineering, or for the construction, maintenance or improvement of streets or highways by the City shall be paid into said fund.

#### **3.24.030 Expenditures.**

All monies in said fund shall be expended exclusively for the purposes authorized by and subject to the provisions of Chapter 3 of Division 3 (Section 2100 et seq.) of the Streets and Highways Code.

## **Chapter 3.30**

### **CITY FEES, CHARGES, RATES AND ASSESSMENTS**

Sections:

3.30.010 Findings.

3.30.020 Purpose.

3.30.030 Fees and assessments to remain in force.

3.30.040 Ordinances not to supersede.

3.30.050 Enforcement.

3.30.060 Construction and interpretation.

**3.30.010 Findings.**

The Council of the City of Elk Grove finds that the ballot measure regarding incorporation of the City of Elk Grove specifically included authorization by the voters for the City to continue to levy and collect within the City the same general taxes, fees, charges, and assessments and rates as are presently levied and collected by the county, and that in adopting the ordinance codified in this chapter it is the intent of the Council to exercise such authorization. In light of said approval by the voters, no further approval is required pursuant to Section 57135 of the Government Code, Proposition 62, or Proposition 218 prior to the adoption of the general taxes levied by this chapter.

**3.30.020 Purpose.**

The purpose of this chapter is to continue in effect the applicability and enforceability of all Sacramento County fees, rates, charges and assessments (hereafter collectively referred to as the "county fees and assessments") applicable to the territory now comprising the City of Elk Grove, whether such county fees and assessments were adopted or set by ordinance, resolution, or otherwise, until expressly superseded by subsequent City ordinance.

**3.30.030 Fees and assessments to remain in force.**

The county fees and assessments shall remain in full force and effect as City of Elk Grove fees, rates, charges and assessments from July 1, 2000, until the City Council has enacted ordinances or resolutions superseding the county fees and assessments.

**3.30.040 Ordinances not to supersede.**

No subsequent City of Elk Grove ordinance shall be deemed to supersede any or all of the county fees and assessments unless the subsequent City ordinance specifically refers to all or a portion of the county fees and assessments and states an intention to supersede it.

**3.30.050 Enforcement.**

The City shall be solely entitled to enforce and receive payment of the county fees and assessments in the incorporated area of Elk Grove, except insofar as enforcement services are provided by Sacramento County as part of its obligation to continue

providing services for the remainder of the 2000-01 Fiscal Year in accordance with Section 57384 of the Government Code.

### **3.30.060 Construction and interpretation.**

In applying, interpreting and enforcing the county ordinances, the following general rules of construction and interpretation shall apply:

A. The use of the words "county," "district," or their equivalents shall be understood to mean "City of Elk Grove." The use of the words "Board of Supervisors," "Board of Directors," "Board of Commissioners," "Board" or their equivalents shall be understood to mean "City Council."

B. In the event there are seemingly conflicting or inconsistent provisions in the county ordinances, the inconsistent provisions should be reconciled to avoid the declaration of an irreconcilable conflict and to carry out the fundamental legislative purpose of the county ordinances.

## **Chapter 3.32**

### **CALIFORNIA LAND CONSERVATION CONTRACTS**

Sections:

3.32.010 Effect of condemnation or cancellation.

#### **3.32.010 Effect of condemnation or cancellation.**

All agreements and contracts entered into between either the County of Sacramento or the City of Elk Grove and owners of property, pursuant to the California Land Conservation Act of 1965, shall be interpreted as follows:

A. Where a contract provides for its nullification upon the filing of a condemnation of all or a portion of the property subject to the contract or of an interest in all or any part of such property where the interest condemned is less than fee, such nullification operates for purposes of establishing value for condemnation purposes; that in administering such portion of the contract the City Council will apply Section 51295 of the Government Code of the state of California and any cancellation of the contract shall be pursuant to Article V (commencing with Section 51280) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code.

B. Where a contract provides for a cancellation when the remaining portion of land, after an action or acquisition by or in lieu of condemnation is determined by the City Council to be impaired to such an extent as to make it unsuitable for those uses legally available to the owner under such terms of his contract, then in administering such portion of the contract such governing body will apply Section 51295 of the Government Code and any cancellation of the contract shall be pursuant to Article V (commencing with Section 51280) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code.

C. If such a contract provides for any waiver of cancellation payment "provided that such waiver is in the best interest of the program to conserve agricultural land," then in administering such portion of the contract, the City Council shall apply subdivision (c) of Section 51283 of the Government Code.

## **Chapter 3.40**

### **UTILITY USER TAX**

Sections:

3.40.010 Short title.

3.40.020 Tax imposed.

3.40.030 Disposition of tax revenue.

3.40.040 Definitions.

3.40.050 Constitutional exemption.

3.40.060 Exemptions.

3.40.070 Electricity user tax.

3.40.080 Gas user tax.

3.40.090 Telephone user tax.

3.40.100 Cable television user tax.

3.40.110 Sewer service user tax.

3.40.120 Interest and penalty.

3.40.130 Actions to collect.



3.40.140 Duty to collect – Procedures.

3.40.150 Additional powers and duties of Tax Administrator.

3.40.160 Assessment – Administrative remedy.

3.40.170 Records.

3.40.180 Refunds.

3.40.190 Delays in implementation.

3.40.200 Annual review.

**3.40.010 Short title.**

This chapter shall be known as the “Elk Grove utility user tax ordinance.”

**3.40.020 Tax imposed.**

There is established and levied, on the effective date of the ordinance codified in this chapter, a utility user tax in the manner and at the rates set forth in this chapter.

**3.40.030 Disposition of tax revenue.**

The utility use tax imposed by this chapter is levied to raise revenue for the general governmental purposes of the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City’s General Fund and used for the usual current expenses of the City.

**3.40.040 Definitions.**

For purposes of this chapter, the following words and phrases shall be construed and defined as set forth in this section:

A. “Cable television corporation” shall have the same meaning as defined in Section 215.5 of the Public Utilities Code.

B. “County” means the county of Sacramento.

C. “Electrical corporation” shall have the same meaning as defined in Section 218 of the Public Utilities Code and shall include a municipal utility district.

D. “Gas” shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

E. "Gas corporation" shall have the same meaning as defined in Section 222 of the Public Utilities Code.

F. "Month" shall mean a calendar month.

G. "Person" shall mean all domestic and foreign corporations, associations, syndicates, joint stock companies, partnerships of every kind, joint ventures, clubs, Massachusetts business or common law trusts, societies, governmental agencies and individuals.

H. "Residential service user" means any service user who is charged for electrical, gas or telephone service based on:

1. A residential rate schedule filed with the California Public Utilities Commission by an electrical, gas or telephone corporation; or

2. A residential rate schedule approved by a municipal utility district.

I. "Service supplier" shall mean a person required to collect and remit a tax imposed under the provisions of this chapter.

J. "Service user" shall mean a person required to pay a tax imposed under the provisions of this chapter.

K. "Sewer service" shall mean the collection, transmission, treatment or disposal of sewage or industrial waste.

L. "Tax Administrator" means the Finance Director.

M. "Telephone corporation" shall have the same meaning as defined in Section 234 of the Public Utilities Code.

### **3.40.050 Constitutional exemption.**

Nothing in this chapter shall be construed as imposing a tax upon any person when the imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state of California.

### **3.40.060 Exemptions.**

A. The taxes imposed by this chapter shall not be levied on any governmental agency.

B. Notwithstanding the provisions of EGMC Section 3.40.070, electrical energy which is separately billed and metered by the service supplier as agricultural service use shall be exempt from the tax levied by that section.

C. Notwithstanding the provisions of EGMC Section 3.40.070, the first Forty-Five and no/100<sup>ths</sup> (\$45.00) Dollars in total monthly charges made for electrical energy to a residential service user shall be exempt from the tax levied by EGMC Section 3.40.070.

D. Notwithstanding the provisions of EGMC Section 3.40.080, the charges made for the baseline rate usage approved by the California Public Utilities Commission for gas furnished to a residential service user shall be exempt from the tax levied by EGMC Section 3.40.080.

E. Notwithstanding the provisions of EGMC Section 3.40.090, the tax imposed by that section shall not be imposed upon any person for using intrastate, interstate or international telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code.

#### **3.40.070 Electricity user tax.**

A. There is hereby levied a tax on every person using electrical energy in the City. The tax imposed by this section shall be at the rate of two and 50/100<sup>ths</sup> (2.5%) percent of the charges made for such energy and shall be paid by the person paying for such energy. The tax applicable to electrical energy provided by a nonutility supplier shall be determined by applying the tax rate to the equivalent charge the service user would have incurred if the energy used had been provided by the electrical corporation furnishing service in the City. Rate schedules for this purpose shall be available from the City. Nonutility suppliers shall install, maintain and use an appropriate utility type metering system which will enable compliance with this section. "Charges," as used in this section, shall include charges made for metered energy and charges for service, including, but not limited to, customer charges, service charges, standby charges, charges for temporary services, demand charges, annual and monthly charges, and any other charge authorized by the California Public Utilities Commission, the Sacramento municipal utility district or the Federal Energy Regulatory Commission.

B. As used in this section, the term "using electrical energy" shall not be construed to include the following:

1. The storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries;

2. The receiving of such energy by an electrical corporation at a point within the City for resale;

3. The use of such energy in the production or distribution of water by a public utility; or
4. The use of electrical energy used in the conduct of business by an electrical corporation, gas corporation or telephone corporation furnishing service in the City.

C. The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

#### **3.40.080 Gas user tax.**

A. There is hereby levied a tax on every person using gas in the City which is delivered through mains or pipes. The tax imposed by this section shall be at the rate of two and 50/100<sup>ths</sup> (2.5%) percent of the charges made for such gas and shall be paid by the person paying for such gas. "Charges," as used in this section, shall include charges made for metered gas and charges for service, including, but not limited to, customer charges, service charges, and annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. As used in this section, the term "charges" shall not include the following:

1. Charges made for gas which is to be resold and delivered through mains or pipes;
2. Charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility;
3. Charges made for gas used in the propulsion of a motor vehicle, as that phrase is defined in the Vehicle Code of the state of California, utilizing natural gas;
4. Gas used in the conduct of business by an electrical corporation, a gas corporation or a telephone corporation furnishing service in the City; and
5. Charges made for gas as used by a nonutility supplier to generate electrical energy for its own use, or for sale to others, provided the electricity so generated is subject to the tax in accordance with EGMC Section 3.40.070.

C. The tax imposed in this section shall be collected from the service user by the person selling the gas. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date

occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**3.40.090 Telephone user tax.**

A. There is hereby levied a tax on every person using intrastate, interstate and international telephone services in the City. The tax imposed by this section shall be at the rate of two and 50/100<sup>ths</sup> (2.5%) percent of the charges made for such services and shall be paid by the person paying for such services.

B. As used in this section, the term "charges" shall not include the following:

1. Charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due;
2. Land mobile services or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations as said section existed on January 1, 1970;
3. Telephone service used in the conduct of business by an electrical corporation, a gas corporation or a telephone corporation furnishing service in the City; and
4. Charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

C. The tax imposed by this section shall be collected from the service user by the person providing the telephone services, or the person receiving payment for such services. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**3.40.100 Cable television user tax.**

A. There is hereby levied a tax on every person using cable television service furnished by a cable television corporation in the City. The tax levied by this section shall be at the rate of two and 50/100<sup>ths</sup> (2.5%) percent of the charges made for such services and shall be paid by the person paying for such service. "Charges," as used in this section, shall include charges for all cable television services, including, but not limited to, basic and premium cable services, customer charges, service charges, per-program charges, and annual and monthly charges.

B. The tax imposed by this section shall be collected from the service user by the person providing the cable television services. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

**3.40.110 Sewer service user tax.**

A. There is hereby levied a tax on every person using sewer service in the City. The tax levied by this section shall be at the rate of two and 50/100<sup>ths</sup> (2.5%) percent of the charges made for such service and shall be paid by the person paying for such service. "Charges," as used in this section, shall include all charges for sewer service, including, but not limited to, customer charges, service charges, standby charges, charges for temporary devices, demand charges, and annual and monthly charges.

B. The tax imposed by this section shall be collected from the service user by the person providing the sewer service. The amount of the tax collected in one (1) month shall be remitted to the Tax Administrator on or before the last day of the following month, unless the due date occurs on a weekend or a holiday, in which case the due date is the first business day following. Taxes shall be deemed remitted on the date received by the Tax Administrator, or on the date postmarked if remitted by first class mail with postage fully prepaid. With prior written approval of the Tax Administrator, remittance of tax may be predicated on a formula based upon the payment pattern of the supplier's customers.

### **3.40.120 Interest and penalty.**

A. Taxes collected from a service user which are not remitted to the Tax Administrator on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest.

B. Any person who fails to remit taxes collected in the time required by this chapter shall pay a penalty of five (5%) percent of the amount of the tax, and if not remitted within two (2) business days after the date of delinquency, shall pay a total penalty of twenty (20%) percent of the amount of tax owed. Such penalty shall attach to the amount of tax due and shall be paid by the person required to collect and remit the tax.

C. If the failure to collect or remit a tax levied by this chapter is the result of fraud or gross negligence, the Tax Administrator shall impose an additional penalty of twenty (20%) percent of taxes owed upon persons required to collect and remit taxes under the provisions of this chapter.

D. Any person required to remit to the Tax Administrator delinquent taxes as required in this section shall pay interest at the rate of one and 50/100<sup>ths</sup> (1.5%) percent per month, or portion thereof, on the amount of tax owed, exclusive of penalties, from the date on which the tax first became delinquent until paid.

E. Notwithstanding the provisions of subsections (B) and (D) of this section, no penalty or interest shall be applied if the person charged with collecting and remitting the tax establishes to the satisfaction of the Tax Administrator that the delinquency is the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax and so notifies the Tax Administrator as soon as normal communications permit.

### **3.40.130 Actions to collect.**

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit the tax. Any person owing money to the City under the provisions of this chapter shall be liable in an action brought in the name of the City for the recovery of such amount.

### **3.40.140 Duty to collect – Procedures.**

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the same time as, and along with, the collection of charges made in accordance with the regular billing practices of the service supplier. Except in those cases where a service user pays the full amount of said charges but does not pay any portion of a tax imposed by this chapter, or where a service user has notified a service supplier that he is refusing to pay a tax imposed by this chapter which said service supplier is required to collect, if the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first. Any remaining balance shall be applied to taxes due.

B. The duty to collect the tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where charges are subject to the provisions of this chapter. Where a person receives more than one bill, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

#### **3.40.150 Additional powers and duties of Tax Administrator.**

A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.

B. The Tax Administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the Tax Administrator's office.

C. The Tax Administrator may make administrative agreements, subject to approval as to form by the City Attorney, to vary the strict requirements of this chapter so that collection of any tax imposed here may be made in conformance with the billing procedures of a particular service supplier so long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the Tax Administrator's office.

D. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The Tax Administrator shall provide the service supplier with the name of any person who the Tax Administrator determines is exempt from the tax imposed hereby, together with the address and account number to which service is supplied to any such exempt person. The Tax Administrator shall notify the service supplier of the termination of any person's right to exemption hereunder, or the change of any address to which service is supplied to any exempt person.



E. The Tax Administrator may file suit in the name of the City to collect delinquent taxes, together with penalties and interest.

**3.40.160 Assessment – Administrative remedy.**

A. The Tax Administrator may assess the service user for taxes not paid to the service supplier.

B. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by such users from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.

C. The service supplier shall provide the Tax Administrator with amounts refused, along with the names, addresses and reasons of the service users refusing to pay the tax imposed under provisions of this chapter. Whenever the service user has failed to pay the amount of tax for a period of two (2) or more billing periods, the Tax Administrator may relieve the service supplier of the obligation to collect taxes due.

D. The Tax Administrator shall notify the service user that he has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by handing it to him personally or by deposit of the notice in the mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax or, should the service user have changed his address, to his last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25%) percent of the amount of the tax set forth in the notice, but not less than Five and no/100<sup>ths</sup> (\$5.00) Dollars, shall be imposed.

**3.40.170 Records.**

It shall be the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the Tax Administrator. The Tax Administrator shall have the right to inspect such records at all reasonable times.

### **3.40.180 Refunds.**

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter, it may be refunded as provided in this section.

B. Notwithstanding the provisions of subsection (A) of this section, a service supplier may, with prior written approval from the Tax Administrator, claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit. A service supplier that has collected any amount of tax in excess of the amount of tax imposed by this chapter, and actually due from a service user, may refund such amount to the service user and may, with prior written approval of the Tax Administrator, claim credit for such overpayment against the amount of tax which is due upon any other monthly returns, provided such credit is claimed in a return dated no later than three (3) years from the date of overpayment.

C. No refund shall be paid under the provisions of this section unless the claimant:

1. Files a written claim for refund with the Tax Administrator within thirty (30) days of the date on which the tax for which a refund is claimed was due; and
2. Establishes his right to a refund by written records showing entitlement thereto.

D. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier may, with prior written approval of the Tax Administrator, take a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the City.

### **3.40.190 Delays in implementation.**

Each service supplier shall immediately implement collection procedures in accordance with the effective dates contained in this chapter.

### **3.40.200 Annual review.**

The City Council shall annually conduct a public hearing prior to the adoption of the final City budget to determine whether the rate of the utility user taxes levied by this chapter should be reduced. After the close of such public hearing, the City Council may, by ordinance approved by majority of all members of the City Council, reduce the rate of any of the utility user taxes levied by this chapter.

## **Chapter 3.42 CONTRACTS AND PURCHASING**

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#### **Article I. General**

##### **3.42.010 Purpose.**

The purposes of this chapter are to define the types of contracts regulated by this chapter, provide for the authority of City officers to enter into certain contracts, and to set forth the procedural requirements for the various types of contracts. All purchases and contracts for contracted services, commodities, equipment and other personal property required by any department or other organizational unit of the City shall be made on behalf of the City in accordance with this chapter, except as otherwise

provided by State law. However, a purchase or contract may be initiated only if sufficient funds have been appropriated and for which there is an unexpended and unencumbered remaining balance sufficient to pay for the purchase or contract. This purchasing system implements California Government Code Sections 54201--54205.

### **3.42.020 Types of contracts.**

The contracts regulated by this chapter are:

- A. Contracts for consultant or professional services; and
- B. Contracts for the purchase of commodities, equipment and general services, including maintenance contracts on same.

### **3.42.030 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

- A. "Amendment" or "change order," means change, or modification, or addendum to a contract after it has been executed.
- B. Reserved.
- C. 1. "Commodities" means any tangible goods or items such as supplies, parts and materials. Generally, they are consumable in City operations, become part or a component of City equipment or City facilities and/or have a useful life of one (1) year or less.
- 2. "Consultant or professional services" means the services of an architect, attorney, landscape architect, engineer, doctor, financial consultant, planning or environmental consultant, investment advisor, banking and trustee services, or other similar professional services as defined in California Government Code Section 37103, as may be amended from time to time.
- 3. "Contract" means any agreement to do or not do a certain thing. "Contract" and "agreement" are synonymous. The term "contract" includes, among other things, a purchase order, a contract for services, and an addendum or change order.
- 4. "Cost", when used in this chapter, shall mean the amount charged, exclusive of sales tax, use tax, delivery charges, shipping and/or handling, and which will be incurred on a fiscal year basis. Where a contract is for multiple years, each year shall meet the cost limitation set forth herein.
- D. Reserved.

E. "Equipment" means tangible personal property with a useful life of more than one (1) year. It may be mobile, portable or fixed; and is an independent functioning unit, as opposed to parts which are components. Examples include, but are not limited to, office equipment, furniture, field equipment, shop, lab, and plant equipment, vehicles and rolling stock.

F. Reserved.

G. 1. "General services" includes:

a. Any work performed or services rendered by an independent contractor, with or without the furnishing of materials, excluding any work defined as a "public project" under Public Contract Code Section 20161 and including, but not limited to, the following:

i. Maintenance or nonstructural repair of City buildings, structures or improvements which does not require engineering plans, specifications or design, including, but not limited to, unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, plumbing, electrical, mechanical, elevator maintenance, custodial services, and pest control,

ii. Installation, repair, modification, and maintenance of City equipment,

iii. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of City supplies, equipment, and waste products,

iv. Providing other technical services to facilitate City operations such as communications, transportation, utilities,

v. Performing repair, demolition or other work required to abate nuisances under this Code;

b. Leasing or rental of equipment (personal property) for use by the City;

c. A maintenance agreement for equipment owned or leased by the City. "General services" does not include work defined as a public project under the Public Contract Code or services that are established as professional services by City Council resolution.

H. Reserved.

I. 1. "Intern" means any part-time or full-time student currently enrolled in any curriculum at a college, university, trade school, or other technical or certificate program in fields relevant to the business of the City.

2. "Internship Program" means any college, university, trade school, or other technical or certificate program that provides an intern(s) to the City. "Internship Program" shall also include any non-profit corporation affiliated with any college, university, trade school, or other technical or certificate program that recruits, screens, hires and compensates interns.

J. Reserved.

K. Reserved.

L. 1. "Local vendor" means a person or legal entity which has a place of business (other than a post office box) within the City and has a valid, current business license issued by the City. To qualify as a local vendor for the purposes of EGMC Section 3.42.230, the vendor shall submit with its bid a completed City-provided affidavit that documents the following: the business has a facility with a City of Elk Grove address, the business will attribute any sales tax from the sale to the City of Elk Grove, and the business has had a City of Elk Grove business license for at least one (1) year prior to the opening of the bid.

M. Reserved.

N. Reserved.

O. Reserved.

P. 1. "Post-consumer recycled material" means material and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste. It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

2. "Public project" shall have the same definition as contained in Public Contract Code Section 20161 as may be amended from time to time

Q. Reserved.

R. 1. "Recycled material" means material and by-products that have been recovered or diverted from solid waste and that can be utilized in place of raw or virgin material in manufacturing a product. It is derived from post-consumer recycled material, manufacturing waste, industrial scrap, agricultural waste, and other waste material, but does not include material or by-products generated from, and commonly reused within, an original manufacturing process.

2. "Recycled product" means material and by-products which have served their intended end use by a consumer and have been recovered or diverted from solid waste.

It does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

S. Reserved.

T. Reserved.

U. Reserved.

V. Reserved.

W. Reserved.

X. Reserved.

Y. Reserved.

Z. Reserved.

**3.42.040 Insurance and indemnification; City Attorney and budget approval; execution.**

Except for a contract for a public project, as defined herein, before a contract is signed by any City representative, or placed on a City Council agenda, the contract must: 1) include appropriate insurance and indemnification provisions reviewed by the City's risk management officer or City Attorney; 2) be approved as to form by the City Attorney; 3) be approved as to budget availability and purchasing procedural compliance by the Finance Director or Budget Officer; and 4) be signed by the other party (except in the instance of a public entity, in which instance it may be signed by the City representative first).

**3.42.050 Encumbrance of contracts.**

Each contract entered into under this chapter and requiring the payment of City funds, after execution, will be entered into the City financial system by an encumbrance against the appropriate budgeted funds.

**3.42.060 Filing with City Clerk.**

A signed original of each contract entered into under this chapter shall be filed with the City Clerk's office, except for transactions involving the purchase of commodities, equipment or general services documented with a purchase order, which is filed with the Finance Department. Contracts shall be retained in accordance with the City Council adopted retention schedule.



### **3.42.070 Voidability.**

Any transaction failing to comply with this chapter in any respect is voidable at the discretion of the City Council.

### **3.42.075 Splitting orders prohibited.**

It is unlawful to split into smaller orders the purchase of commodities, equipment or general services for the purpose of evading the competitive bidding provisions of this article.

## **Article II. Contract Authority**

### **3.42.080 City Council authority.**

City Council approval is required for each contract regulated by this chapter unless authority to sign the contract is granted to another City officer under this Article II. Such authority shall be exercised consistent with this EGMC Chapter 3.42.

### **3.42.090 City Manager Authority.**

A. The City Manager is authorized to enter into and sign on behalf of the City, without the prior approval of the City Council, a contract:

1. Which contains an initial maximum compensation figure of up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars or less. As to a change order, the limit of authority may not exceed ten (10%) percent of the original contract amount not to exceed a cumulative total of Fifty-Five Thousand and no/100<sup>ths</sup> (\$55,000.00) Dollars. Cumulative additional change orders exceeding Fifty-Five Thousand and no/100<sup>ths</sup> (\$55,000.00) Dollars must be approved by the City Council;
2. Which is not required by any applicable State law to be let to the lowest bidder;
3. Right of entry onto real property agreements.

B. In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable.

C. The City Manager shall report, in writing, every exercise of the purchasing authority granted by this ordinance at a City Council meeting within thirty (30) days of exercise of

the authority, or the next City Council meeting if such meeting does not occur within thirty (30) days.

### **3.42.100 Department head authority.**

Department heads are authorized to enter into and sign on behalf of the City, without the prior approval of the City Manager or City Council, a contract that meets all of the following criteria:

A. Which is for the purchase or lease of commodities, equipment, general services, and professional services;

B. Which contains a maximum compensation amount up to Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars. As to a change order, the limit of authority is twenty-five (25%) percent of the original contract, not to exceed a cumulative amount of Thirty-One Thousand Two Hundred Fifty and no/100<sup>ths</sup> (\$31,250.00) Dollars; and

C. Which is not required by any State law to be let to the lowest responsible bidder.

## **Article III. Consultant and Professional Services**

### **3.42.110 Authority; definition.**

The City Manager and the department heads are each authorized to enter into a contract for consultant or professional services in accordance with the limits on their authority in Article II of this Chapter. "Consultant or professional services" is defined in EGMC Section 3.42.030(C).

### **3.42.120 Procurement of services with a value of less than \$25,000.**

For procurement of services with a value of less than Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars, the procurement procedures shall be established by an administrative regulation of the City Manager.

### **3.42.130 Procurement of services with a value from \$25,000.01 up to \$50,000.**

A. Informal request for proposal (RFP) procedure. The procurement of services with a value from Twenty-Five Thousand and 01/100<sup>ths</sup> (\$25,000.01) Dollars up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars shall be made following the procedure prescribed below:

1. Solicitation of proposals. The department may solicit proposals by written (including e-mail) or verbal request to prospective consultants. Informal requests for proposals shall, whenever possible and practicable, be based on at least three proposals and shall

be awarded to the best qualified and most responsible proposer. The dollar amount of the proposal shall be considered but the award need not be made to the lowest dollar proposal.

2. Retention of proposal. The department shall retain all proposals in accordance with the City Council approved retention schedule.

3. Award of contracts. The City Manager is authorized to award a contract in accordance with the authorization granted in EGMC Section 3.42.100.

B. Exceptions. The request for informal proposal procedure may be dispensed with in an emergency or when the City Manager in his or her best judgment makes a written finding that compliance with these procedures is not in the best interest of the City.

**3.42.140 Procurement of services with a value of \$50,000.01 or more.**

A. Formal request for proposal (RFP) procedures. The City shall procure services with a value of Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars or more following the procedure prescribed below:

1. Request for proposals. The request for proposal (RFP) shall include a general description of the services to be procured, shall include a proposed professional services agreement, and the time and place for submission of proposals. A notice inviting proposals shall be distributed to at least three (3) consultant firms and shall be posted on the City website at least ten (10) days prior to the deadline for submission of proposals. Proposers shall submit sealed proposals and shall identify them as proposals on the envelope.

2. Evaluation of proposals. All responsive proposals shall be reviewed and evaluated by the City in order to determine which proposer best meets the City's needs by demonstrating the competence and professional qualifications necessary for the satisfactory performance of the required services. The criteria by which the City shall evaluate proposals will be set forth in the request for proposals. The City reserves the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process.

3. Award of contract. The City Manager shall award a contract for the services with a value greater than Twenty-Five Thousand and 01/100<sup>ths</sup> (\$25,000.01) Dollars but less than Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars. The City Council shall award a contract for services with a value equal to, or greater than, Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars.

B. Exceptions. Formal requests for proposals under this section may be dispensed with:

1. In an emergency;
2. When the services can be obtained from only one source which has been reviewed and approved in writing by the City Manager;
3. When, in the judgment of the City Manager or City Council, compliance with the procedure is not in the best interest of the City for services between Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars and One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars;
4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is consistent with the provisions of this chapter;
5. Contracts for City-managed professional services in an amount up to One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars if the following criteria are met: (a) a City Council approved reimbursement agreement exists, (b) an applicant for development entitlements has deposited the full amount of the contract with the City, and (c) the funds are to be used for development related studies, such as an environmental impact report; or
6. When, in the determination of the City Council, compliance with the procedure is not in the best interest of the City for those professional services, the costs of which exceed One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars.

#### **Article IV. Purchasing Commodities, Equipment and General Services**

##### **3.42.150 Applicability.**

This Article IV applies to the purchase of commodities, equipment and general services purchased on behalf of the City except for those supplies or materials governed by the Public Contract Code. The purpose of this Article IV is to establish efficient procedures for the purchase of commodities, equipment and general services at the lowest possible cost commensurate with quality needed, to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases.

##### **3.42.160 Purchases below \$5,000.**

For purchases of less than Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars, the purchasing procedures shall be established by an administrative regulation of the City Manager.

### **3.42.170 Purchases from \$5,000.01 up to \$50,000.**

A. Informal open-market procedure. The purchase of commodities, equipment and general services from Five Thousand and 01/100<sup>ths</sup> (\$5,000.01) Dollars up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars may be made in the open market, following the procedure prescribed below:

1. Minimum number of quotations. Open-market purchases shall, whenever possible and practicable, be based on at least three (3) quotations and shall be awarded to the lowest responsible quotation.
2. Notice inviting quotations. The department making the purchase shall solicit quotations by written (including e-mail) or verbal request to prospective vendors.
3. Quotations. Quotations shall be submitted in writing (including facsimile and e-mail) to the department, which shall keep a record of all open-market orders and quotes for a period of six (6) months after the submission of quotes or the placing of orders. This record is open for public inspection.
4. Award of contracts. The department head is authorized to award a contract for Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars or less when the City Council has budgeted funds for the item(s) and the amount of the award is not more than the budgeted amount.
5. Award of contracts. The City Manager is authorized to award a contract of up to Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars when the City Council has budgeted funds for the item(s) and the amount of the award is not more than the budgeted amount.

B. Exceptions. The open market procedure may be dispensed with:

1. In an emergency;
2. When the goods can be obtained from only one source which has been reviewed and approved in writing by the City Manager;
3. When, in the judgment of the City Manager, compliance with the procedure is not in the best interest of the City;
4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is consistent with the provisions of this chapter, as set forth in EGMC Section 3.42.220.
5. When an intern is provided to the City through an Internship Program, which has been reviewed and approved in writing by the City Manager.

### **3.42.180 Purchases of \$50,000.01 or more.**

A. Formal contract procedures. The City shall purchase commodities, equipment and general services of a value equal to or greater than Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars following the formal bid procedure prescribed below:

1. Notice inviting bids. The notice inviting bids shall include a general description of the articles or general services to be purchased, and shall State where bid forms and specifications may be secured and the time and place for opening bids.

2. Published notice. The notice inviting bids shall be published at least ten (10) days before the date of the opening of the bids. Notice shall be published at least once in a newspaper of general circulation.

3. Bidders' list. The City shall also solicit sealed bids from responsible prospective suppliers whose names are on the bidders' list.

4. Bidders' security. When deemed necessary, the City shall require bidders' security. Bidders' security shall be in accordance with the provisions of the California Public Contract Code.

5. Bid opening procedure. Bidders shall submit sealed bids to the City Clerk and shall provide the project number or other reference and identify them as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) days after the bid opening.

6. Rejection of bids. At its discretion, the City Council may reject any and all bids presented, and may re-advertise for bids.

7. Award of contracts. The City Council shall award a contract for the purchase of commodities or equipment or general services with a value of Fifty Thousand and 01/100<sup>ths</sup> (\$50,000.01) Dollars or more. A contract shall be awarded to the responsible bidder with the lowest responsive bid, except as otherwise provided here. A contract may be awarded to the next lowest responsible bidder if the successful bidder refuses or fails to execute the contract.

8. Tie bids. If two (2) or more bids received are for the same total amount or unit price and quality, service and delivery being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Manager or City Council may accept the one it chooses, or accept the lowest good faith offer by negotiation with the tie bidders.

9. Performance bonds. The City has the authority to require a performance bond before entering a contract, in such amount as is reasonably necessary to protect the best interest of the City. If a performance bond is required, the form and amount of the bond shall be described in the notice inviting bids.

B. Exceptions. Bidding under this section may be dispensed with:

1. In an emergency; or
2. When the purchase can be obtained from only one source which has been reviewed and approved in writing by the City Manager; or
3. When, in the determination of the City Council, compliance with the procedure is not in the best interest of the City for those commodities, equipment or general services the costs of which equal or exceed Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars.
4. When processed through a cooperative purchasing agreement with another public agency whose procurement process is consistent with the provisions of this chapter.

**3.42.200 Equipment leasing.**

A. Leasing of equipment shall be in accordance with the authority limits set forth in Article II, depending upon the annual cost of the lease.

B. Each contract for the leasing or rental of equipment for the City shall contain a provision permitting the City to terminate the contract at the end of any fiscal year during the term of the contract upon not less than thirty (30) days' written notice to the other party.

**3.42.210 Inspection and testing.**

The City may inspect supplies, equipment and general services delivered, and determine their conformance with the specifications set forth in the order or contract. A department head has the authority to require chemical and physical tests of samples submitted with bids, and samples of deliveries which are necessary to determine their quality and conformance with specifications.

**3.42.220 Cooperative purchasing agreements with other public agencies.**

Nothing in this article prohibits the voluntary participation by the City in any cooperative purchasing agreement(s) or programs entered into between the City and the State, County, or other public agencies, including but not limited to California Multiple Award Schedule ("CMAS"), U S Communities, and Houston/Galveston Area Council. The City Manager is authorized to act under the provisions of this article to procure for the City supplies and equipment in conjunction with such voluntary cooperative purchasing

agreement(s) or programs as may be entered into by the City. All formal contract and bidding procedures to be followed in such cases shall be those specifically enumerated in the voluntary cooperative purchasing agreement or program.

#### **3.42.230 Local vendor preference.**

A bid or proposal from a local vendor for commodities, equipment, and general services will be tabulated as if it were five (5%) percent below the figure actually set forth in the bid or proposal to account for the financial advantages accruing to the City by the award of a bid to a local vendor. The City, when seeking bids or proposals for commodities or equipment, will notify bidders or proposers that bids or proposals will be evaluated on the basis of a local preference of five (5%) percent of the bid or proposal price.

#### **3.42.240 Use of recycled products.**

At the option of the department making the purchase, the bid specifications may include a five (5%) percent price preference to be given to recycled products. If included, the price preference shall be determined based upon the lowest price quoted by suppliers offering recycled products and the maximum amount of the price preference shall not exceed Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars per purchase. Persons submitting proposals or bidding to provide products or services to the City shall be notified of the City's preference for the use of recycled products, including the price preference. Bidders shall be asked to identify in writing to the City the types of recycled materials that will be used and to certify in writing the percentage and contents of recycled material and post-consumer recycled material in the product.

### **Article V. Public Projects Subject to the Public Contract Code**

#### **3.42.250 Prequalification of bidders.**

A. Purpose. This section is enacted pursuant to Section 20101 of the California Public Contract Code, which authorizes the City to establish a system for prequalification of prospective bidders on public works construction and maintenance projects. In addition, pursuant the City's general police powers under California Constitution Article 11, Section 7, the City desires to apply this process to the award of public works maintenance contracts in order to ensure that bidders are qualified to perform City public works maintenance.

B. Prequalification of bidders.

1. The City hereby establishes a system for prequalification of prospective bidders for public works construction and maintenance projects. The City may



use the prequalification system identified in this section for any public works project.

2. The City Engineer is authorized to adopt and apply a uniform system of rating bidders for each project based on: 1) the requirements of California Public Contract Code Section 20101, and 2) the model guidelines and standardized questionnaire created by the State of California Department of Industrial Relations, as modified at the City Engineer's discretion to address the needs of the particular project, or projects, to which they are to be applied.
3. a. Prequalification of prospective bidders shall be conducted for public works projects that involve the construction, retrofitting, remodeling, renovation or expansion of public buildings, water or wastewater treatment facilities, water works; maintenance of roadways, drainage facilities, roadway landscaping, or parks; or require significant specialized experience or expertise, unless the City Engineer determines that it is in the best interests of the City to forgo prequalification of prospective bidders on a particular project. In making his or her determination whether it is in the best interests of the City to forgo prequalification of prospective bidders on a particular project, the City Engineer's decision shall be supported by one or more of the following reasons:
  - i. prequalification of prospective bidders is likely to unreasonably adversely affect the cost of the project,
  - ii. the complexity, scale or cost of the project do not warrant use of this prequalification process,
  - iii. there is an urgent need, based upon concerns for the health and safety of the public, to pursue the project on an expedited basis,
  - iv. the particular project is of such a specialized nature that there is a very limited pool of qualified potential bidders, and for this reason the purposes of the prequalification process may be accomplished by use of a bid questionnaire, or
  - v. the project will not be competitively bid.
- b. Notwithstanding subsection (B)(3)(a) of this section, the City Engineer is authorized to require prequalification of prospective bidders on any public works project or to engage in a program of prequalification of prospective bidders, on public works projects on a recurring basis as provided in Section 20101 of the California Public Contract Code.

4. If prequalification of prospective bidders is required for a particular project, the City Engineer shall determine which bidders are qualified to bid that project based upon the uniform system of rating bidders. If the City Engineer determines any bidder is not qualified to bid a project, the City Engineer shall provide to the bidder written notice that includes the basis for the determination and an identification of any supporting evidence therefore, and an opportunity for the bidder to appeal the determination pursuant to subsection (C) of this section. A copy of all prequalification determinations shall be filed with the City Clerk at least ten (10) days prior to the scheduled bid opening.

### C. Appeals.

1. Any person aggrieved by a determination made by the City Engineer pursuant to subsection (B)(4) of this section may appeal the determination only by complying with the requirements set forth in this subsection. Such an aggrieved person shall be referred to herein as "appellant." Without a timely appeal, the appellant waives any and all rights to challenge the decision of the City Engineer, whether by administrative process, judicial process or any other legal process or proceeding.

2. The appellant shall submit a written notice of appeal to the City Clerk, along with a complete written description of all factual and legal bases for the appeal and accompanied by a fee in the amount established by resolution of the City Council, no later than ten (10) days after the City has mailed written notice of the determination made by the City Engineer. Should the appellant prevail in its appeal, the deposit shall be returned to the appellant and the City shall bear the costs of the appeal. If the appellant does not prevail, the deposit shall be used to pay all costs associated with the appeal. If the deposit is insufficient to pay the entirety of the costs of the appeal, the appellant shall pay the remaining costs within thirty (30) days after the decision. Any failure by the appellant to timely pay any outstanding appeal costs, as required herein, shall be considered by the City in future prequalification proceedings.

3. If the appellant gives the required notice of appeal provides the necessary deposit and requests a hearing, the hearing shall be conducted so that it is concluded no later than five (5) business days prior to the last date for the receipt of bids on the project or twenty (20) days following City's receipt of the notice of appeal, whichever is sooner. The hearing shall be an informal process conducted by an arbitrator, who shall be an attorney experienced in public works and construction matters. The arbitrator may be selected by the mutual consent of the appellant and the City. If an agreement cannot be reached regarding the selection of the arbitrator, the appellant and the City shall each exchange a list of three (3) arbitrators they would be willing to accept. In turn, beginning with the appellant, each party shall strike one (1) name from the other party's list until only one (1) name remains and that remaining person shall be the arbitrator. If the

arbitrator selected is unavailable, the parties shall repeat the process until they succeed in selecting an available arbitrator.

4. At the hearing, the appellant and the City shall each be provided an opportunity to be represented by legal counsel and to present or rebut any evidence bearing upon the issues presented in the appeal. Each party shall bear his, her, its, or their own attorneys' fees, regardless of the outcome of the appeal.

5. The arbitrator shall consider relevant evidence presented during the hearing and provide a written decision on the appeal to the City, with a copy to the City Clerk, and the appellant within one (1) business day after the close of the hearing. The time identified in this section for providing the arbitrator's decision may be extended only by consent of the City and the appellant and such an extension shall not affect or require a delay in a scheduled time for opening of bids for any public works project. Failure by the arbitrator to render a timely decision shall be deemed a denial of the appeal.

6. The arbitrator's decision shall be final.

## **Article VI. Acquisition and Disposition of Interests in Real Property**

### **3.42.280 Leases of real property.**

A. City-owned real property. The City Council shall be the authorizing authority for all leases and licenses of City-owned property. If consideration for the lease is in excess of One and no/100<sup>ths</sup> (\$1.00) Dollar per year, the property shall be leased by means of competitive proposals unless the City Council finds that an award by competitive proposals is not in the best interests of the City.

B. City lease of private property:

1. Leases with a term of greater than one (1) year and an annual lease payment of Twenty-Five Thousand and 01/100<sup>ths</sup> (\$25,000.01) Dollars or more shall be authorized by Council.

2. Leases with a term of less than one (1) year and/or an annual lease payment of less than Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars may be authorized by the City Manager.

### **3.42.290 Acquisition of real property.**

The acquisition of real property, whether by negotiation, dedication, or eminent domain, shall be in accordance with State law. The limits set forth in Article II of this chapter shall apply to acquisitions of real property.

### **3.42.300 Disposition of real property.**

A. Procedures for the disposition of real property shall be in accordance with State law. In accordance with California Government Code Section 65402(a), the Council hereby determines that the provisions of that section shall not apply to:

1. the disposition of the remainder of a larger parcel which was acquired and used in part for street purposes;
2. acquisitions, dispositions, or abandonments for street widening; or
3. alignment projects, provided such dispositions for street purposes, acquisitions, dispositions, or abandonments for street widening or alignment projects are of a minor nature.

B. The report of the planning commission regarding the conformance of a capital improvement project with the general plan made pursuant to California Government Code Section 65401 shall also constitute the report required by California Government Code Section 65402(a) regarding each acquisition or disposition of real estate, street abandonment or vacation, or public building or structure included in that capital improvement project.

C. The disposition of real property shall be by competitive proposals unless the City Council, by resolution, determines other procedures are in the best interests of the City.

## **Article VII. Surplus Commodities and Equipment**

### **3.42.310 Surplus commodities and equipment.**

A. Each department shall submit to the Finance Director, at such times and in such forms as the Finance Director prescribes, reports showing all commodities and equipment which are no longer used or which have become obsolete or worn out. The Finance Director has the authority to sell or otherwise dispose of all commodities and equipment which cannot be used by any department or which have become unsuitable for City use, or to exchange the same for or trade the same in on new commodities and equipment. The Finance Director also has the authority to make transfers between departments of any useable surplus commodities or equipment.

B. Disposition may include abandonment, destruction or donation to public bodies, charitable, civic or non-profit organizations and may include City property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales

procedures may include negotiated sales, acceptance of sealed bids or public auction. Services of a paid auctioneer may be used, as appropriate.

C. The City Manager shall approve the disposition of commodities and/or equipment when the total estimated value is less than Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars; however, City Council approval is needed if the value is equal to or exceeds Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars.

D. 1. Except for surplus police canines, no officer, agent or employee of the City assigned to the purchasing function or responsible for surplus property declarations shall either directly or indirectly submit a bid for or purchase unneeded surplus personal property.

2. Whenever a police canine is removed from active service except for illness, viciousness, or some similar situation, the dog will be offered to the handler for the sum of One and no/100<sup>ths</sup> (\$1.00) Dollar. Upon such disposition, the new owner shall sign a waiver of legal liability, releasing the City of Elk Grove, the City of Elk Grove Police Department, and departmental personnel from all liability or responsibility for anything which concerns the animal from that day forward. The new owner receiving the dog must, as a condition of his or her receipt of the dog, immediately relicense the dog in the new owner's name at their expense. The City shall provide all pedigree papers to the new owner receiving the canine.

### **Chapter 3.43**

#### **DELEGATION OF AUTHORITY TO THE FINANCE DIRECTOR TO INVEST FUNDS IN THE CITY TREASURY**

Sections:

3.43.100 Delegation of authority to the Finance Director to invest funds in the City Treasury.

#### **3.43.100 Delegation of authority to the Finance Director to invest funds in the City Treasury.**

Subject to annual review and renewal by the City Council by resolution pursuant to Section 53607 of the Government Code, the Finance Director is authorized to invest or reinvest the funds of the City and the funds of other depositors in the City Treasury, or to sell or exchange securities so purchased, pursuant to Chapter 4 (commencing with Section 53600 of the Government Code) of Part 1 of Division 2 of Title 5.

**TITLE 4**

**BUSINESS REGULATION**

**Chapters:**

**Division 1. General Provisions for Licenses and Permits**

**4.02 General Provisions for Business Licenses**

**4.04 Solicitation Licenses and Permits**

**4.06 General Business Licenses**

**Article I Applicability and Issuance**

**Article II Denial and Revocation**

**4.10 Special Business Licenses and Employee Permits**

**Article I Applicability and Issuance**

**Article II Denial and Revocation**

**Article III Additional Special License Requirements**

**Division 2. Particular Special Business Licenses**

**4.15 Taxicabs**

**4.16 Medical Cannabis Dispensaries**

**4.20 Cardrooms**

**4.21 Bingo Games**

**4.22 Bingo Parlors**

**4.23 Bingo Suppliers**

**4.25 Pawnbroker, Secondhand Dealers and Junk Dealers**

**4.26 Junk Tire Storage**

**Article I Special Business License Required**

**Article II Requirements-Services**

**Article III Penalties**

**4.27 Tobacco Retailers**

**4.30 Adult-Related Establishments**

**Article I General Provisions**

**Article II Licenses and Permits**

**4.31 Adult-Oriented Businesses**

**Article I General Provisions**

**Article II Definitions**

**Article III Adult-Oriented Business Licenses**

**Article IV Adult-Oriented Business Employee Permits**

**Article V Denial, Suspension, and Revocation of License or Permit**

**Article VI Development and Performance Standards**

**Article VII Enforcement**

**4.35 Outdoor Festivals**

**Article I General Provisions and Requirements**

**Article II Special Business License**

**4.36-4.50 Reserved for Special Business Licenses**

**Division 3. Other Business Regulation**

**4.54 Additional Regulations and Prohibitions for Businesses**

**Article I Street Businesses**

**Article II Aggressive Solicitation**

**Article III Drug Paraphernalia**

**Article IV Fireworks**

**Article V Public Convenience Determination for Alcohol Licenses**

## **Chapter 4.02**

### **GENERAL PROVISIONS FOR BUSINESS LICENSES**

#### Sections:

4.02.010 Purposes.

4.02.015 Organization of title.

4.02.020 Definitions – Generally.

4.02.021 Definitions – “Solicitation activity.”

4.02.022 Definitions – “Solicitor.”

4.02.023 Definitions – “Solicitation permit.”

4.02.024 Definitions – “Business.”

4.02.025 Definitions – “Employee permit.”

4.02.030 Definitions – “Fixed location.”

4.02.035 Definitions – “General business license.”

4.02.040 Definitions – “Person.”

4.02.045 Definitions – “Convicted” or “conviction.”

4.02.050 Definitions – “Special business license.”

4.02.055 Authority of city officers.

4.02.060 License fees.

4.02.065 Transferability.

4.02.070 Transferability – Partial change in ownership – Special business license.

4.02.075 Transferability – Partial change in ownership – General business license.

4.02.076 Transferability – Partial change in function – General business license.

4.02.080 Term.

4.02.085 Administration.

4.02.090 Notices.



4.02.095 Hearing Authority.

4.02.100 Violations.

4.02.105 Inspection.

4.02.110 Laws not enforced.

4.02.115 Statutory references.

4.02.120 Effective date.

4.02.125 Severability.

4.02.130 Continuity.

**4.02.010 Purposes.**

The purposes of this title are to regulate businesses and other enterprises within the City in order to ensure compliance with City ordinances and state laws, protect the public, health, safety, and welfare in the event of a disaster, prevent disturbances of neighborhoods and nuisances, and otherwise protect the health, safety and welfare of the residents of the City.

A vast array of City ordinances and state laws administered and enforced by City officials regulate the location, construction, improvements in, off-street parking for and other aspects of business-associated enterprises with fixed locations. Such regulation is for the purpose of protecting members of the public against building, safety and other hazards, adverse environmental impacts, risks to health and of public nuisance, risks of fire, disasters, and other life-threatening dangers, and other threats to the public peace, health, safety and welfare.

A purpose of this title and each of its chapters is to license all enterprises within the City's jurisdiction in order to maintain certain vital information about such enterprises operating within the City that could be detrimentally affected by or could be essential to provide assistance in the event of an extraordinary natural or manmade disaster.

Additionally, other purposes of this title and each of its chapters are to license enterprises that typically generate significant ordinance enforcement effort, promote improved enforcement of related ordinances, reduced overall enforcement costs, provide a higher level of protection of the public, and reduce the risk that well-intentioned business operators are prejudiced by the unexpected enforcement of regulations at a time when compliance is least convenient.

Additional purposes of this title and each of its chapters are to license enterprises that generate economic activity to promote and protect the economic health and safety of the City by providing an economic database about enterprises operating within the City so as to allow public officials to plan and anticipate economic threats to the well-being of the City.

The purposes set forth herein are incorporated into every chapter of this title and each chapter may or may not set forth additional specific purposes for regulation of particular types of businesses.

The City Council does hereby declare that it finds any one of these manifold purposes sufficient in and of itself for justification for the adoption of this title and independently each of its chapters, and it further declares that it would have adopted this title and independently each of its chapters in their entirety based upon any one of the above-stated purposes, and invalidation of any one purpose or more of the above purposes would not have caused the City Council not to adopt the entire title or independently each of its chapters.

#### **4.02.015 Organization of title.**

The provisions of this title are organized as follows:

A. This chapter contains introductory and master provisions governing the application of the balance of the chapters in this title.

B. EGMC Chapter 4.04 establishes, defines the applicability of, and proscribes procedures and the basis for issuance, denial, renewal and revocation of the solicitation license and solicitor permits for door-to-door, cold-calling solicitation and similar solicitation methods.

C. EGMC Chapter 4.06 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of the general business license.

D. Unless a different or more specific provision is provided for in EGMC Chapters 4.15 through 4.35, EGMC Chapter 4.10 establishes, defines the applicability of, and prescribes procedures and the basis for issuance, denial, renewal and revocation of special business licenses and employee permits.

E. EGMC Chapters 4.15 through 4.35 establish special procedural and substantive regulations applicable to specified business enterprises required to obtain a special business license and personnel thereof required to obtain employee permits.

F. EGMC Chapter 4.54 contains regulations and prohibitions applicable to specified business enterprises or solicitation activities.

#### **4.02.020 Definitions – Generally.**

Unless the context indicates otherwise, the definitions of terms contained in EGMC Sections 4.02.021 through 4.02.050 shall govern the meaning of those terms as used in this title.

#### **4.02.021 Definitions – “Solicitation activity.”**

“Solicitation activity” shall mean actions of any person who attempts to sell, solicit or take orders for goods, wares, merchandise, books, periodicals, subscriptions, photographs, and any personal service by going from private residence to private residence, or by appointment arranged by an unsolicited contact with a resident of the private residence, or by any other similar method and not from a fixed business location within the City.

#### **4.02.022 Definitions – “Solicitor.”**

“Solicitor” shall mean a person who engages in solicitation activities as a sole business owner or as an agent, representative, employee, or independent contractor to a person or entity required to obtain a solicitation license.

#### **4.02.023 Definitions – “Solicitation permit.”**

“Solicitation permit” shall mean a permit issued by the Chief of Police to a solicitor and required pursuant to the provisions of EGMC Chapter 4.04.

#### **4.02.024 Definitions – “Business.”**

“Business” shall mean any enterprise or endeavor by a person operated or conducted for profit or nonprofit purposes.

#### **4.02.025 Definitions – “Employee permit.”**

“Employee permit” shall mean a permit issued by the Chief of Police or other designated official to certain personnel retained as employees, independent contractors or otherwise to perform specified duties or functions by particular types of enterprises required by EGMC Chapters 4.10 through 4.35 to possess a special business license for the purpose of ensuring protection of the public health, safety or welfare.

#### **4.02.030 Definitions – “Fixed location.”**

“Fixed location” shall mean a particular place where an enterprise is either regularly conducted or kept open, or is conducted or kept open on four (4) or more days during

any consecutive thirty (30) day period. An enterprise operated from a residence shall be deemed to be conducted at a fixed location.

**4.02.035 Definitions – “General business license.”**

“General business license” shall mean a license issued by the City Manager and required pursuant to the provisions of EGMC Chapter 4.06, in order to ensure compliance with specified ordinances, prevent disturbances of neighborhoods and nuisances, and prevent safety hazards.

**4.02.040 Definitions – “Person.”**

“Person” shall mean a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity carrying on a business for which a permit or license must first be procured, and shall include any officer, employee, agent or other representative by or through whom the business is operated or conducted.

“Person” shall not include a public agency or any officer, employee or agent thereof while acting in the capacity as such.

**4.02.045 Definitions – “Convicted” or “conviction.”**

“Convicted” or “conviction,” in relation to the outcome of criminal charges, shall include a plea of *nolo contendere*.

**4.02.050 Definitions – “Special business license.”**

“Special business license” shall mean a license issued by the Chief of Police or other designated official and required pursuant to the provisions of EGMC Chapters 4.10 through 4.35 for specified types of businesses which are potentially injurious to the public interest, are not regulated by the state in such a manner as to preempt local regulation, and which the health, safety and welfare of the community demand be operated by responsible persons in compliance with all laws, including any special regulations applicable to such businesses.

**4.02.055 Authority of city officers.**

Whenever reference in this title is made to the City Council or any department, office, division, officer or official, the reference shall be deemed to be to, respectively, the City Council, or a department, office, division, officer or official of the City.

Whenever in this title an authority or power is vested in or a duty is imposed upon an officer or official, a City employee subordinate to the officer or official to whom an

appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.

#### **4.02.060 License fees.**

The City Council may, by resolution and from time to time, prescribe fees for the issuance and renewal of solicitation licenses, solicitor permits, general business licenses, special business licenses and employee permits, fees for special oversight of some special business licenses, and fees for the filing of appeals relating to denial of such permits or licenses or the suspension or revocation thereof. Such fees shall be for the sole purpose of defraying costs incurred in the administration of this title, and shall be prescribed in amounts yielding revenues which do not exceed the costs of administration by each office and department charged with responsibility under this title. To the extent the City Council determines to be practical, such fees may be varied in amounts for different types of permits or licenses, types of businesses, issuance and renewal, and on the basis of other factors, for the sole purpose of apportioning relative regulatory costs to parties regulated. Commercial enterprises subject to unrelated business taxable income under Sections 511 to 515 of the Internal Revenue Code not exempted by EGMC Section 4.06.010(A) and operated by certain types of nonprofit organizations may be exempted from fees authorized herein, if a contribution from the general or another fund supported by tax revenues is made by the City Council to underwrite the costs of regulation.

Fees related to the costs which a department incurs in reviewing and acting upon a particular type of application for a license or permit may be made payable within a general fee chargeable by the City Manager, or may be charged individually by the department reviewing and acting upon the application as a condition precedent to processing of the approval required from that department.

All fees for the issuance and renewal of permits and licenses shall be paid at the time of and with the filing of the application with the City Manager or pursuant to a request for approval by another department charged with the responsibility of reviewing the application. All fees for an appeal shall be paid at the time of and with the filing of the appeal. No application or request for approval or appeal shall be deemed valid or complete until all prescribed fees have been paid.

#### **4.02.065 Transferability.**

A solicitation license, general business license or special business license shall not be transferable or assignable from one person to another.

Each such license shall terminate and be deemed to have no further force or effect upon: 1) a transfer from one person to another of the whole ownership of the business

or enterprise; or 2) a change of the whole function or operation for which the permit or license has been issued.

During the term of a general business license or a special business license and within thirty (30) days of the occurrence thereof, the holder shall file in writing with the City Manager notice of: 1) the transfer from one person to another of the whole ownership of the business or enterprise, or 2) a change of the whole function or operation for which the permit or license has been issued.

**4.02.070 Transferability – Partial change in ownership – Special business license.**

A. During the term of a special business license, the holder of the permit or license shall file in writing with the Chief of Police notice of each:

1. Addition or deletion of a general or limited partner, when the holder is a partnership;
2. Addition or deletion of a joint venturer, when the holder is a joint venture;
3. Transfer of more than one-half of one (0.5%) percent of the voting shares of stock, when the holder is a commercial corporation;
4. Change of directors, when the holder is either a for-profit or nonprofit corporation;
5. Change of membership in management committee composed of persons holding ownership interests, when the holder is a partnership or joint venture;
6. Change in membership of a governing body or other board or committee to which management is entrusted, when the holder is an unincorporated association; and
7. Change in president or general manager, vice president or chief assistant manager, secretary and treasurer, or any officer with equivalent or similar authority.

B. The holder of a license or permit shall provide in writing such detailed information respecting any such change as the Chief of Police may require.

C. A termination of a special business license shall be deemed to have occurred whenever the Chief of Police determines that effective management or control of the holder has been transferred in significant part to a person whose character or business responsibility was not reviewed at the time the license was issued, and when written notice of the Chief of Police's determination and of termination of the license is served on the holder. The effective date of termination shall be fifteen(15) days following the date of service of the notice of termination, except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.075 Transferability – Partial change in ownership – General business license.**

During the term of a general business license, the holder shall file in writing with the City Manager notice of each: 1) addition or deletion of a general partner, when the holder is a partnership; 2) addition or deletion of a joint venturer, when the holder is a joint venture; and 2) transfer of more than ten (10%) percent of the voting shares of stock, when the holder is a commercial corporation.

A termination of the license shall be deemed to have occurred whenever the City Manager determines that a change in ownership has occurred in significant part to another person and when written notice of the determination and of termination is served upon the holder. The effective date of termination shall be fifteen (15) days following the date of service of the notice of termination, except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.076 Transferability – Partial change in function – General business license.**

During the term of a general business license, the holder of the permit or license shall file in writing with the City Manager notice of any change in the business function, operation, or enterprise for which the permit or license has been issued. The holder shall provide in writing such detailed information relating to any alteration in the business function, operation, or enterprise as the City Manager may require.

A termination of the license shall be deemed to have occurred when the City Manager determines that any such change materially alters the business function, operation, or enterprise for which the license has been issued in a manner which requires a new investigation of the applicability of or compliance with the laws enforced through the license, and when written notice of the determination and of termination is served upon the holder.

The effective date of termination shall be fifteen (15) days following the date of service of notice of termination, except if an appeal from termination is filed within the time and in the manner prescribed, termination shall occur on the date on which the appeal is finally determined.

**4.02.080 Term.**

General business licenses shall expire when the person to whom the license is issued ceases operations authorized thereby. The term of a general business license shall be two years from the date of issuance. Licenses previously issued under prior provisions

of this section prescribing a three (3) year term shall expire three (3) years from the date of issuance and shall then be reissued upon qualification for a two (2) year term.

Solicitation licenses and special business licenses shall expire when the person to whom the license is issued ceases operations authorized thereby. The term of a solicitation license, special business license, a solicitor permit, and an employee permit shall be one (1) year from the date of issuance.

#### **4.02.085 Administration.**

Except as otherwise provided, the City Manager is charged with the responsibility of administering general business licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent, and express terms of this title as he or she deems necessary to implement such purposes, intent and express terms. Whenever in this title the City Manager is charged with responsibility to administer a particular provision, the City Manager may delegate such responsibility to other departments and subordinate personnel of the City.

Except as otherwise provided, the Chief of Police is charged with the responsibility of administering special business licenses, and shall be authorized from time to time to promulgate and enforce such rules or regulations consistent with the purposes, intent and express terms of this title as he or she deems necessary to implement such purposes, intent and express terms. No rules or regulations promulgated by the City Manager or Chief of Police, or amendments thereof, shall be enforced or become effective until thirty (30) days following the date on which the proposed rules or regulations are filed with the City Clerk.

#### **4.02.090 Notices.**

Any notice or other writing authorized or required by this title shall be deemed served and effective for all purposes on the date when it is reduced to writing and is either personally delivered to the party to whom it is directed or sent by first class certified mail, return receipt requested, and addressed to the party to whom it is directed. Where notice under this provision is mailed, the service is complete at the time of deposit, but any period of notice and any right or duty to do any act or make any response shall be extended five (5) days. When under the provisions of this title any notice or other writing is authorized or required to be filed, it shall not be deemed to have been filed until it is received in the office of the official with whom filing is required.

Whenever a provision in this title requires a public hearing to be conducted, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten (10) days in advance of the date of commencement of the hearing in a newspaper of general circulation. The same type of notice shall also be served on each



licensee whose license would be affected by the action taken at the conclusion of the hearing.

#### **4.02.095 Hearing Authority.**

A. Whenever the term "Hearing Authority" is utilized in this title, it shall be deemed to refer to a person assigned the responsibility of conducting a hearing by the City Manager. The City Manager shall be authorized to assign hearing responsibilities from time to time to:

1. City management personnel who the City Manager finds are qualified by training and experience to conduct such hearings;
2. Any attorney whom the City may employ for the purpose of conducting administrative hearings;
3. Attorneys engaged in practice within the Elk Grove community who are retained by contract to conduct such hearings; or
4. Administrative Law Judges assigned to the State of California Office of Administrative Hearings.

B. The City Manager is hereby authorized to contract in the name of the City for the retention of hearing services either by attorneys engaged in private practice or the Office of Administrative Hearings at rates which do not exceed those payable by the City for the legal defense of tort liability claims within financial limitations established by the City's annual budget.

#### **4.02.100 Violations.**

Except as otherwise specifically provided, pursuant to the provisions of Section 36900 of the Government Code, violation of any of the provisions contained in this title shall constitute an infraction which shall be enforced pursuant to EGMC Chapter 1.04.

Violation of any of the following provisions of this title following service at the business of a written notice by an enforcing official advising of the violation and ordering a cessation thereof shall, pursuant to the provisions of EGMC Chapter 1.04, constitute a misdemeanor: EGMC Sections 4.06.005, 4.06.006, 4.10.005, 4.15.015, 4.16.010, 4.20.010, 4.21.005, 4.22.020, 4.23.025, 4.25.005, 4.34.200, 4.34.210, 4.35.205, 4.54.010, 4.54.020, 4.54.105, 4.54.220, 4.54.225, 4.54.300, 4.54.330 and 4.54.340. As used in this subsection, an enforcing official includes the Chief of Police, City Manager and any other City officer charged with the responsibility of administering the provisions of this title. Pursuant to the provisions of Section 836.5 of the Penal Code, City personnel acting under the direction and control of the City Manager shall be authorized

to enforce and arrest persons without a warrant for violations of those provisions within those chapters and articles of this title which are assigned, respectively, to the administrative responsibility of the City Manager.

#### **4.02.105 Inspection.**

The City Manager is charged with the responsibility of enforcing the provisions of this title, and to that end may inspect any and all types or classes of businesses which are by this title licensed and regulated. The City Manager, Chief of Police, and their deputies or subordinate personnel may enter any place of business which is subject to the provisions of this title for the purpose of inspection for compliance with this title.

The City Manager may, during the term of a license, require the licensee to complete a license information update form for the purpose of assuring continued compliance with this title. The licensee shall, within fifteen (15) days of the date of mailing by the City Manager of such an information form, file the completed form with the City Manager.

#### **4.02.110 Laws not enforced.**

There are many ordinances and other laws applicable to businesses licensed under EGMC Chapters 4.06 through 4.35 which are not sought to be enforced under that licensing process. Such laws include, but are not limited to, building, fire, electrical and other codes and regulations contained in EGMC Chapter 4.54, and noise control, sewage disposal and other health measures. It has been determined that the administrative costs of enforcing such laws would result in fee levels which are so high as to exceed the benefits produced by such enforcement.

Neither the issuance of a general business license nor a special business license shall be deemed to constitute a representation that the business so licensed or the premises upon which it is situated complies with such ordinances or other laws. Nor shall the existence of such an unrevoked license be deemed to preclude any criminal or civil remedy for violation of such ordinances or laws, including, but not limited to, the closure of the business if otherwise warranted under remedies sought to be invoked. The possession of either a general business license or special business license shall not be deemed to relieve the holder of the requirement to apply for or obtain any other license or permit required by ordinance or statute.

#### **4.02.115 Statutory references.**

Any reference to a state or federal statutory or regulatory provision contained in this title shall be interpreted to refer to such provision as it may be amended or renumbered from time to time.

#### **4.02.120 Effective date.**

The provisions of this title shall become effective February 1, 2006.

### **Chapter 4.04**

#### **SOLICITATION LICENSES AND PERMITS**

Sections:

4.04.000 Purposes.

4.04.010 Solicitation license and solicitor permit required.

4.04.015 Exemptions.

4.04.020 Statement of exemption.

4.04.025 Solicitation license application.

4.04.030 Solicitation license issuance.

4.04.035 Conditions on solicitation license and permit.

4.04.040 Solicitors.

4.04.045 Solicitor permit.

4.04.050 Renewal.

4.04.055 Suspension or revocation.

4.04.060 Appeal.

#### **4.04.000 Purposes.**

The City Council finds that door-to-door solicitation, including appointments arranged through cold calling residents of the City, historically have generated complaints regarding the sale of goods, services, securities, investments, and other products. With unfortunate frequency, many solicitation schemes prey upon the elderly and infirm of the community. Without the requirement that such solicitors obtain a permit from the City, residents are exposed to higher risk of unfair sales and business practices by businesses and organizations with no physical presence in the City and therefore less accountability for their business practices. For these reasons, the City Council licensing

of such businesses and their solicitor agents is required to protect the public, safety, and welfare.

#### **4.04.010 Solicitation license and solicitor permit required.**

It is unlawful for any person or entity to engage in, conduct or carry on any business, exhibition, occupation or service that is based upon solicitation activities as defined in EGMC Section 4.02.021, without first having, upon written application, procured a solicitation license from the City Manager.

It is unlawful for any person employed or working on behalf of a business engaged in a solicitation business to engage in the solicitation activities as defined in EGMC Section 4.02.021 without first having, upon written application, procured a solicitor permit from the City Manager.

#### **4.04.015 Exemptions.**

This chapter does not apply to:

A. Girl Scouts, Camp Fire Girls, Boy Scouts, Little League members and members of similar organizations when soliciting on behalf of such organizations;

B. Persons who represent a fixed place of business in the City who regularly make deliveries, normally not involving personal contact with customers for the purpose of making sales or obtaining orders, over an established route and who only occasionally make calls on persons residing within the area covered by such route for the purpose of obtaining additional customers for such regular deliveries. The foregoing provisions are intended to cover only such persons as milk delivery persons, newspaper delivery persons and other persons engaged in substantially similar activities;

C. Persons soliciting charitable contributions on behalf of any nonprofit corporation or nonprofit voluntary unincorporated association organized for charitable purposes;

D. Persons who go from private residence to private residence for political purposes or for the purpose of influencing legislation.

#### **4.04.020 Statement of exemption.**

A. Every person claiming to be entitled to exemption from the payment of any license fee or from any other requirement provided for in this chapter upon the ground that such license casts a burden upon his or her right to engage in commerce with foreign nations or among the several states, or conflicts with the laws of the United States respecting interstate commerce, shall file a verified statement with the City Manager, disclosing the interstate or other character of his or her business entitling such exemption. The statement shall contain the name and location of the company or firm for which the

orders are to be solicited or secured, the name of the nearest local or state manager, if any, and his or her address, the kinds of goods, wares or merchandise to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the state, the method of delivery, the name and location of the residence of the applicant, and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract form or other papers used by such person in taking orders shall be attached to the affidavit. The affidavit may be filed by a firm on behalf of one or more employees or representatives of the firm who are subject to the requirements of this chapter.

B. If the City Manager determines that a license fee is not applicable with respect to any person because of interstate commerce requirements, a license fee shall not be required and the person may be issued an exempt license. Such license shall be valid only for the purpose of authorizing solicitation of orders to be filled directly from another state. Any person who is eligible for a license pursuant to this section shall be subject to all applicable provisions of this chapter.

#### **4.04.025 Solicitation license application.**

A person may apply for a solicitation license by filing an application with the City Manager and paying the required fees. The City Manager shall forward the application for the solicitation license to the Chief of Police for investigation in the same manner as provided for a special business license under EGMC Section 4.10.035.

#### **4.04.030 Solicitation license issuance.**

The City Manager shall issue a solicitation license unless:

A. The City Manager finds in writing that the application is not complete despite requests for supplemental information;

B. The City Manager finds in writing that the application or any supplementary material contains false information;

C. The City Manager finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code, or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another, and the City Manager concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law-abiding manner or in a

manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

1. A general or limited partner of a partnership which possesses an ownership interest in the enterprise;
2. A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this section would apply if the partnership or corporation were the sole owner of the enterprise;
3. A sole proprietor when the enterprise is a sole proprietorship;
4. An owner of more than one-half of one (0.5%) percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;
5. A director, when either a commercial or nonprofit corporation possesses an ownership in the enterprise;
6. A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;
7. A member of a governing body or other board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or
8. A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01, et seq., of the California Penal Code, or that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under Section 4852.01, et seq., of the California Penal Code.

D. The City Manager finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the City Manager, that the applicant is licensed to engage in the business as a contractor by the State of California Contractors

State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

#### **4.04.035 Conditions on solicitation license and permit.**

Every solicitation license issued by the City Manager shall include the following conditions:

A. Solicitation activities shall not be conducted by any license holder or any solicitor between the hours of 9:00 p.m. to 8:00 a.m. the following day on weekdays, 9:00 p.m. on Fridays to 9:00 a.m. on Saturdays, and 9:00 p.m. on Saturdays to 10:00 a.m. on Sundays;

B. Every solicitor shall carry on his or her person the City-issued solicitor permit at all times when conducting solicitation activities and shall produce such permit to any law enforcement officer upon demand; and

C. Any other condition reasonably related to protection of the public interest in solicitation activities.

#### **4.04.040 Solicitors.**

The employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, may be covered under a single license obtained by and issued in the name of the firm as long as each such person holds a valid solicitor permit issued pursuant to EGMC Section 4.04.045.

#### **4.04.045 Solicitor permit.**

A. It is unlawful for any solicitor to conduct solicitation activities within the City without having first obtained a solicitor permit pursuant to this section.

For the purposes of this section, the word "solicitor" includes all employees, agents, solicitors or representatives of any firm, irrespective of the form of organization, subject to the solicitation license requirement of this chapter.

B. A solicitor may file a written application for a solicitor's permit with the City Manager, giving the name and address of the applicant, the firm or organization which he represents, a description of the purpose for which the applicant proposes to conduct solicitation activities and such other information the City Manager and Chief of Police may require.

C. The City Manager shall refer the applicant to the Chief of Police who shall fingerprint and photograph the applicant and obtain reports from the State Department of Justice of any record regarding the applicant which is available from those agencies. After an

applicant has been fingerprinted and photographed by the Chief of Police, the applicant shall be issued a temporary permit by the City Manager, valid for forty-five (45) days, unless the Chief of Police, based on a check of any immediately available record or source of information regarding the character of the applicant or the business responsibility of the firm which he represents, disapproves the issuance of a temporary permit. If the Chief of Police disapproves, his reasons for disapproval shall be specified in writing, a copy of which shall be delivered to the applicant. When he or she receives the reports, the Chief of Police shall forward them to the City Manager together with any other relevant information from the Chief of Police's files regarding the applicant and the firm which the applicant plans to represent in the City.

D. On the face of each permit, including temporary permits, there shall be placed each of the following:

1. The solicitor's permit number;
2. The solicitor permit holder's name and address;
3. The name and address of the firm or organization which the holder represents;
4. A physical description of the holder or a photo ID;
5. The expiration date of the permit.

E. While engaged in solicitation activities, the solicitor's permit shall be carried on the person of the solicitor who, upon demand, shall show such permit to any person authorized to enforce this chapter.

#### **4.04.050 Renewal.**

Not later than forty-five (45) days prior to expiration of the term of a solicitation license or a solicitor's permit, the City Manager shall transmit to the licensee or permit holder by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding license. The City Manager may provide an option for businesses to renew and pay license and permit fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a solicitation license or solicitor's permit renewal electronically, the licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Section 1633.1, et seq., of the Civil Code.



#### **4.04.055 Suspension or revocation.**

A solicitation license issued pursuant to this chapter may be immediately suspended or revoked during its term if the City Manager finds in writing that one or more of the following grounds exists:

- A. That information in the latest application was untrue;
- B. That the City Manager or the Chief of Police has acquired information supporting a finding that one of the persons listed in EGMC Section 4.04.045(A) has a new criminal conviction or a criminal conviction previously undisclosed;
- C. That the licensee or any one of the licensee's solicitors has violated one or more conditions imposed; or
- D. That the licensee or any one of the licensee's solicitors has violated any term, condition or requirement or prohibition established by this chapter or EGMC Chapter 4.02 which are applicable to the license or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

#### **4.04.060 Appeal.**

Any person aggrieved by any decision or action of any City officer or employee may file a written notice of appeal pursuant to EGMC Chapter 1.11.

### **Chapter 4.06**

#### **GENERAL BUSINESS LICENSES**

Sections:

##### **Article I. Applicability and Issuance**

4.06.000 Purposes.

4.06.005 License required.

4.06.006 Temporary concessions.

4.06.010 Exemptions.

4.06.055 Home occupations.

4.06.060 Zoning enforcement.

- 4.06.065 Number of licenses.
- 4.06.070 Application filing.
- 4.06.075 Application contents.
- 4.06.080 Investigation.
- 4.06.085 Issuance.
- 4.06.090 Conditions.
- 4.06.095 Procedure for imposition.
- 4.06.100 Contents and display of licenses.
- 4.06.105 Application for renewal.
- 4.06.110 Processing and issuance – Renewal.
- 4.06.115 Undetected violations.

## **Article II. Denial and Revocation**

- 4.06.200 Grounds for denial.
- 4.06.205 Method of denial.
- 4.06.206 Request for extension.
- 4.06.210 Appeals.
- 4.06.215 Appeal hearing.
- 4.06.220 Finality of determination.
- 4.06.225 Review by City Council.
- 4.06.230 Grounds for revocation.
- 4.06.235 Method of revocation.
- 4.06.240 Appeal of revocation.
- 4.06.245 Effect of revocation.
- 4.06.250 Other procedures.
- 4.06.255 Judicial review of administrative determination.

## **Article I. Applicability and Issuance**

### **4.06.000 Purposes.**

The purposes of this chapter are set forth in EGMC Section 4.02.010.

### **4.06.005 License required.**

Except as provided by EGMC Section 4.06.010, no person shall operate or conduct at a fixed location within the City any enterprise whatsoever, including, but not limited to, a manufacturing, fabricating, processing, assembly or repair; wholesaling or storage; lodging, rental housing, or other temporary or permanent housing; entertainment; service; retailing; educational; hospital or other medical care; or business or professional office enterprise; home occupation or family contractor's business; or other facility to which members of the general public are invited; or adult-related uses as defined in this title; unless under and by authority of a valid, unexpired and unrevoked general business license authorizing the enterprise issued pursuant to the provisions of this chapter. It is intended by this chapter to license, unless expressly exempted, every enterprise operated at a fixed location which is of a type described by this section, whether the enterprise is operated for commercial, nonprofit, charitable or other purposes, and whether the enterprise is operated or conducted independently or in association with or at the same location as an enterprise or activity for which a license is not required.

A person shall be deemed to operate or conduct an enterprise and violate this section if the person, without a required general business license in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise for which the license is required.

### **4.06.006 Temporary concessions.**

A. No person shall operate or conduct within the City a temporary concession, whether or not the temporary concession is conducted at a fixed location, unless under and by authority of a valid, unexpired and unrevoked general business license issued pursuant to the provisions of this chapter authorizing the temporary concession at the location where it operates.

B. As used in this section, and except as hereinafter expressly provided, a "temporary concession" is any out-of-doors retail sales operation, whether conducted for an hour or less, a day, or longer, established for the purpose of selling flowers, produce, Christmas trees or greens, clothing, paintings or other artistic products, books or other written materials, or other goods from a table, stand, temporary sheltered enclosure, cart, motor vehicle or similar equipment.

C. A “temporary concession” shall not be deemed to include:

1. The sale of Christmas trees or greens in connection with and on the same premises as a supermarket, hardware or home maintenance or repair store, or other established business, if a temporary structure and electrical wiring are not employed in connection with such sales;

2. Residential “garage sales” conducted for the purpose of disposing household goods formerly utilized in a home which have become surplus, where such garage sale is conducted on the residential premises where the goods to be sold were utilized;

3. The sale from stands of fireworks preceding and in connection with the celebration of the Fourth of July as such temporary sales are permitted as provided in EGMC Chapter 4.54;

4. The sale of agricultural products on the site where the product is grown; and

5. The sale or offering for sale or distribution from public sidewalks or pedestrian circulation areas of shopping centers or malls of products to pedestrians who are traversing such areas or patrons of retail stores.

D. The exemption of the above activities from the temporary concessions licensing requirement shall not be deemed to authorize any activity which is illegal under other laws or to exempt any such activities from other applicable laws; or to deprive the owner or occupant of private property of any otherwise applicable right to consent to such activity.

E. Notwithstanding the provisions of EGMC Section 4.02.085, the Chief of Police shall enforce the provisions of this section by citing and charging pursuant to the provisions of EGMC Section 4.02.100 such persons who violate this section.

#### **4.06.010 Exemptions.**

A business license shall be issued to the following enterprises at no charge and marked as “EXEMPT” upon the completion of an application that demonstrates to the satisfaction of the City Manager that the business qualifies for an exemption provided in law including, but not limited to, the following California constitutional or statutory exemptions:

A. Any nonprofit organization exempt from tax as provided in Section 501(c)(3) of the Internal Revenue Code (churches, educational institutions, charitable organizations, and scientific organizations) to the extent of its tax-exempt activities; however, no exemption is granted to any commercial business activity of a Section 501(c)(3) organization for

which it has unrelated business taxable income as provided in Section 511-515 of the Internal Revenue Code (bookstores, coffeeshops, child care centers, etc.);

B. Any apartment, rooming house, duplex, and other residential facility in which living units are rented or leased solely on a term of thirty (30) days and longer;

C. Any agricultural activities such as the growing of crops or raising of livestock and all the auxiliary and ancillary uses incidental to operation of a farm or ranch; however, no exemption is granted to any wholesaling, processing or storage of products of multiple farms or other cooperative marketing arrangement;

D. Any sale of produce (vegetables, nuts, fruits, etc.) raised on the same parcel of land from a roadside stand served by no public utility services on a seasonable basis not to exceed four (4) months;

E. Any enterprise that solely manufactures, sells, purchases, possesses or transports alcoholic beverages as provided in Article XX, Section 22 of the California Constitution;

F. Any enterprise operating as a bank or financial corporation subject to the in-lieu taxes payable to the state under Section 23182 of the California Revenue and Taxation Code;

G. Any enterprise operating solely as an intercity transportation business for household goods or other property for hire that is under the jurisdiction of the Public Utilities Commission pursuant to Section 5327 of the Public Utilities Code;

H. Any commercial traveler whose business is limited to goods, wares, and merchandise sold or dealt in at wholesale as provided in Section 16002 of the California Business and Professions Code;

I. Any enterprise operating solely as a real estate auctioneer whose principal place of business is located outside the City as provided in Section 16002.1 of the California Business and Professions Code;

J. Any cafe musician who plays a musical instrument at any retail establishment where food or alcoholic beverages are sold or given away as provided in Section 16000.5 of the California Business and Professions Code;

K. Any enterprise operating solely for the solicitation of donations for the support of veterans by federally chartered veterans' organizations specified in Title 36 of the United States Code as provided in Section 16001.7 of the California Business and Professions Code;

L. Any person honorably discharged or honorably relieved veteran who is unable to earn a livelihood from manual labor as provided in Section 16001.5 of the California Business and Professions Code;

M. Any blind person operating a vending facility as provided in Section 19633 of the California Welfare and Institutions Code;

N. Any residential care facility or residential day care home of six (6) or less people, or a small family day care of eight (8) children or less as provided in Section 1523.1(b), 1566.2, 1568.05(b), 1569.185, 1596.803 or 1597.45 of the California Health and Safety Code;

O. Any professional services business, not based at a location within the City, whose work in the corporate limits, in the judgment of the City Manager, constitutes such a *de minimus* contact with the City that the imposition of the regulatory fee would unfairly burden intercity business as provided in City of San Jose v. Ruthroff & Englekirk Consulting Structural Engineers, Inc. (1982) 131 Cal.App.3d 462; and

P. Any adult-oriented business as defined and regulated in EGMC Chapter 4.31.

#### **4.06.055 Home occupations.**

Unless exempt under EGMC Section 4.06.010, a general business license shall be required for any business, enterprise or activity which is operated or conducted as a home occupation. A general business license shall also be required for a family contractor's business.

As used in this chapter, a "home occupation" shall mean and include any commercial use conducted in a dwelling unit which is also utilized for residential purposes. The terms "family contractor's business" shall mean a business operated at or from a residence which employs only members of the resident's family, and which may include the storage of contractor's equipment or supplies at the residence of one of the family members engaged in the business.

#### **4.06.060 Zoning enforcement.**

The administration of the general business license under the provisions of this chapter shall assist the City Manager or his or her designee to enforce the provisions of the Zoning Code, as those provisions may hereafter be amended, and the terms, conditions and requirements of rezoning ordinances and any and all contracts associated therewith, variances, conditional use permits and other legislative and administrative approvals issued pursuant to the Zoning Code.

#### **4.06.065 Number of licenses.**

In instances where space within an office building, shopping center, warehouse, department store or other structure or property is leased for business or commercial

use, each tenant of the premises operating an enterprise required to be licensed hereunder shall apply for and obtain a general business license.

When a particular enterprise has more than one fixed location or branch within the City, a separate general business license shall be required for each location or branch.

Certain types of persons required to obtain general business licenses hereunder are also required to obtain a special business license or other license or permit under this or other titles. The issuance of a special business license or other license or permit for an enterprise shall not be deemed to excuse the requirement that a general business license be obtained, and the provisions of this chapter are declared to be independently applicable to each enterprise to which the provisions of this chapter apply.

The provisions of this chapter shall also be deemed to be independently applicable to any enterprise required to be licensed hereunder which is also required by any state or other law to obtain a license, permit or certificate.

#### **4.06.070 Application filing.**

All applications for general business licenses shall be filed in the office of the City Manager, or in the office of his or her designee.

#### **4.06.075 Application contents.**

The application for a general business license shall be filed on a form and contain such information as is prescribed by the City Manager, including the following:

- A. The name and address of the person or entity who owns the enterprise for which application is made;
- B. A complete description of the enterprise to be conducted at the location for which the license is sought;
- C. The address of the location for which the license is sought;
- D. The assessor's parcel number;
- E. The number of employees reporting to and/or located at the business site. If the business is seasonal, the highest and lowest number of employees reporting to and/or located at the business site with the corresponding month or months of the year for each period;
- F. The number of electronic, mechanical and video games to be operated in the business;

G. Whether or not the applicant or enterprise is a contractor, as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California Contractors' State License Board, with a license in good standing, and the license number and class thereof; and

H. Such other and further information as is deemed necessary to enforce the Zoning Code, and administer the provisions of this chapter.

The City Manager may provide an option for businesses to initially apply and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license application electronically, the applicant consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his or her electronic signature shall be enforceable in any proceeding as if the application was submitted with a manual signature consistent with Section 1633.1, et seq., of the Civil Code.

#### **4.06.080 Investigation.**

The City Manager shall refer the application for review by:

A. The City Manager or his or her designee; and

B. The Chief of Police, if the enterprise requires a special business license.

The City Manager or his or her designee shall examine the application for the purpose of determining whether the enterprise complies with the Zoning Code, and whether any conditions should be attached to issuance of the license. Inspection of the site shall be conducted as necessary to determine applicability, compliance with, or the adequacy of corrections to achieve compliance with such laws.

#### **4.06.085 Issuance.**

A. The City Manager shall act upon an application not later than forty-five (45) days after the date a complete application is validly filed except where EGMC Section 4.06.206 is applicable. An application is complete and deemed validly filed when all information requested on the application form is provided by the applicant and any associated fees paid. The City Manager shall act upon the application by issuing the license unless one of the following occurs:

1. The City Manager or his or her designee finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit determinations respecting compliance with the Zoning Code;



2. The City Manager or his or her designee finds in writing that the enterprise at the location proposed would violate the Zoning Code, and that such violation or violations must be corrected in advance of the conduct of the enterprise; or

3. With respect to an enterprise required by EGMC Chapter 4.10 to obtain a special business license, the special business license has not been issued; or

4. Pursuant to Section 16100 Subdivision (c) of the Business and Professions Code, when the applicant or enterprise is a "contractor," as that term is defined in Section 7026, et seq., of the Business and Professions Code, and as determined by the City Manager the applicant has failed to provide sufficient proof that he or she holds a State of California Contractor's License presently valid, effective, not suspended, and in good standing.

B. Unless issued to a temporary concession not operated from a fixed location, a general business license issued under this chapter shall authorize the holder thereof to operate or conduct a business enterprise only on such property the address of which is stated on the license. In the event the licensee ceases to use the property for the business, activity or enterprise listed, the license shall have no further force or effect and becomes void.

#### **4.06.090 Conditions.**

A. Upon recommendation by the City Manager or his or her designee, the City Manager may issue the general business license upon such conditions as are necessary to ensure safety and prevent the enterprise from disturbing the peace and tranquility of the neighborhood in which it is located. Such conditions may include the following:

1. With respect to minor and correctable violations of the Zoning Code, that the holder of the license correct the violation within a prescribed period of time;

2. Limitations upon hours or days of operation when required in order to prevent disturbance of the peace and quiet of a neighborhood caused by the enterprise or the patrons thereof at a particular location;

3. The provision of adequate off-street parking to prevent the enterprise from inconveniencing neighbors or causing traffic disruptions at a particular location;

4. The installation of on-site improvements required to prevent operation of the enterprise from disturbing its neighbors at a particular location; or

5. Other conditions related to operations or improvements demonstrated under the particular circumstances to be necessary in order to prevent hazards, disturbances of the peace, quiet or safety of the neighborhood or other nuisances.

B. Such conditions may be imposed at the time a general business license is initially issued, upon renewal of the license, or at any time during the term of the license.

**4.06.095 Procedure for imposition.**

Any condition imposed pursuant to the provisions of EGMC Section 4.06.090, together with the written reasons therefor, whether established at the time of issuance, at the time of renewal or during the term of a general business license, shall be served upon the applicant or holder in a written notice.

The conditions shall become effective fifteen (15) days following the date of service of the notice thereof except if an appeal is filed within the time and in the manner prescribed, the conditions shall not become effective until the appeal is finally determined.

**4.06.100 Contents and display of licenses.**

The general business license shall include but not be limited to a complete description of the enterprise for which it is issued, the date of issuance and date of expiration, and a description of any and all conditions upon which the license has been issued. The license shall be conspicuously posted at the place of business in full public view.

**4.06.105 Application for renewal.**

A. Not later than forty-five (45) days prior to expiration of the term of a general business license, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be on such a form, and include such information, as prescribed and required by the City Manager, including the following:

1. A description of any change in the type of business conducted on the premises since the last license was issued; and
2. A description of any and all improvements which the applicant has made upon the premises since the last license was issued.

B. The application for renewal shall be filed with the City Manager not later than the date of expiration of the immediately preceding license. The City Manager may provide an option for businesses to renew and pay business license fees on the City's website in a manner consistent with the process specified herein for paper-based transactions. As a condition of processing a business license renewal electronically, the licensee consents to the use of electronic means of notice and expressly acknowledges that his or her submission of his or her electronic signature shall be enforceable in any proceeding as if the renewal was submitted with a manual signature consistent with Section 1633.1, et seq., of the Civil Code.

#### **4.06.110 Processing and issuance – Renewal.**

A. An application for renewal shall be investigated and processed in the manner prescribed by EGMC Section 4.06.080. The City Manager shall act upon the application for renewal not later than thirty (30) days after the date a valid application is filed unless the applicant has filed with him or her, before expiration of the thirty (30) days, written notice of a request for extension of the time within which action is taken on the application for renewal by the City Manager on grounds that such additional time is required by the applicant to prepare and present plans or other information, obtain zoning variances or other permits, remodel the premises or make other corrections necessary to comply with the Zoning Code or for other similar reasons. The City Manager may, pursuant to such a notice request, extend the time within which action is required by the City Manager on the application to such a period as he or she deems reasonable and appropriate to accomplish the corrections. The City Manager shall act upon the application for renewal within the thirty (30) day period, or the extended period of time, as applicable, by issuing the renewed license unless:

1. One or more of the conditions identified in EGMC Section 4.06.085 apply; or
2. The City Manager finds in writing that one or more conditions applicable to the preceding license at the same location have been violated, and it is determined pursuant to the provisions of EGMC Section 4.06.090 that such conditions shall also be applicable to the renewed license.

With respect to any application for renewal which is filed on or before the date of expiration of the immediately preceding license, the City Manager shall extend the term of the immediately preceding license, without charge, during the period of any investigation required in order to determine whether the license should be renewed.

#### **4.06.115 Undetected violations.**

Under EGMC Sections 4.06.085 and 4.06.110, the City Manager is required to issue new and renewed general business licenses in the absence of any identified deficiencies or violations of law. Such action is required within limited time periods in order to promote expeditious processing of applications and reduce damaging delays to applicants in awaiting administrative determinations.

The mandates of EGMC Sections 4.06.085 and 4.06.110 may result in the issuance of general business licenses notwithstanding the existence of violations of the laws sought to be enforced. Therefore, neither the issuance nor receipt of a general business license shall constitute evidence of compliance with the Zoning Code, or, as required pursuant to Section 16100 of the Business and Professions Code, evidence of compliance with the licensing provisions of contractors, as contractors are defined in Section 7026 of the

Business and Professions Code, or valid licensure by the Contractors State License Board, or a representation or assurance to the recipient upon which reliance is authorized or intended by the City that the enterprise for which the license is issued or the property or premises upon or in which it is housed complies with such laws.

## **Article II. Denial and Revocation**

### **4.06.200 Grounds for denial.**

The City Manager shall deny an initial application for or application for renewal of a general business license if any written finding of EGMC Section 4.06.085 applies.

The City Manager shall also deny an application for renewal upon a finding that one or more conditions applicable to the preceding license at the same location have been violated, if, pursuant to the provisions of EGMC Section 4.06.090, it is determined that such conditions should also be applicable to the renewed license.

### **4.06.205 Method of denial.**

A denial of an initial application or application for renewal of a general business license by the City Manager shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this chapter, shall be served upon the applicant pursuant to the provisions of EGMC Section 4.02.090.

Denial of an initial application or application for renewal of a general business license shall relate solely to the location at which the enterprise is proposed, and shall not affect the conduct of such enterprise at another location within the City.

With respect to denial of an application for renewal or termination, the immediately preceding general business license shall be deemed to be in full force and effect for a period of fifteen (15) days following the date of service upon the applicant of the notice of denial or of termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by EGMC Section 4.06.210, the immediately preceding general business license shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

### **4.06.206 Request for extension.**

The denial of an initial application or application for renewal of a general business license shall be set aside by the City Manager if the applicant has filed with him or her a timely written notice of a request for extension of time within which action is taken on grounds that additional time is required to prepare and present plans or other

information, obtain zoning variances or other permits, remodel the premises or make other corrections for the purpose of remedying violations of the Zoning Code or for other similar reasons. Such written request for extension shall be filed with the City Manager not later than fifteen (15) days after the date of service of the notice of denial prescribed in EGMC Section 4.06.205. The City Manager shall by regulation establish reasonable periods of time to grant a licensee or applicant extension in order for the licensee or applicant to complete the tasks enumerated above in this section.

If the period of extension elapses without correction of the deficiencies for which the extension was granted, within fifteen (15) days from the last day of that period of extension, the City Manager shall deny the application pursuant to the procedure set forth in EGMC Section 4.06.205. If the deficiency for which the extension was granted is corrected, the City Manager shall issue the general business license no later than fifteen (15) days from the last day of the period of extension as provided in EGMC Sections 4.06.085 or 4.06.110.

#### **4.06.210 Appeals.**

A. The holder of a general business license or applicant therefor may file an appeal from the following:

1. The denial of an initial application for or application for renewal of a general business license pursuant to the provisions of EGMC Section 4.06.200;
2. The imposition of conditions at the time of issuance of an initial or renewed general business license or during the term thereof, pursuant to the provisions of EGMC Section 4.06.095; or
3. The termination of a general business license as a result of a change in ownership or a business function pursuant to the provisions of EGMC Sections 4.02.075 or 4.02.076.

B. Any such appeal shall be filed not later than thirty (30) days after the date of service of the notices pursuant to EGMC Chapter 1.11.

#### **4.06.230 Grounds for revocation.**

Any general business license issued pursuant to this chapter may be revoked during its term upon one or more of the following grounds:

- A. That the enterprise is operated in a manner or is housed on premises or within a building which violates or is in violation of the Zoning Code;
- B. That the holder of the license has violated one or more conditions upon which the license has been issued; or

C. That the enterprise is that of contractor as defined in Section 7026, et seq., of the Business and Professions Code, and the City Manager finds that the licensee possesses no State of California Contractor's License presently valid, effective, not suspended, and in good standing.

**4.06.235 Method of revocation.**

The City Manager may revoke a general business license by issuing a written notice of revocation, stating the reasons therefor, and serving same, together with a copy of the provisions of this chapter, upon the holder of the license. The revocation shall become effective thirty (30) days after the date of service unless the holder of the license files an appeal within the time and in accordance with the provisions of EGMC Chapter 1.11. If such an appeal is filed, the revocation shall not become effective until a final decision on the appeal is issued.

**4.06.240 Appeal of revocation.**

Following the date on which the notice of revocation is served, the holder of the license may file a written appeal pursuant to EGMC Chapter 1.11.

**4.06.245 Effect of revocation.**

With respect to any enterprise required by the provisions of EGMC Chapter 4.10 to possess a special business license, revocation of the special business license shall automatically and without notice also revoke each general business license issued for the same business at each location at which the enterprise is located.

With the foregoing exception, revocation of a general business license shall terminate only the privilege of doing business at the location to which the license relates.

**4.06.250 Other procedures.**

Any administrative remedy, including an appeal procedure, applicable to the interpretation, administration or enforcement of this title and the Zoning Code shall be exhausted. The failure to exhaust such a remedy shall constitute grounds for denial of an appeal under this article.

**4.06.255 Judicial review of administrative determination.**

An applicant for, or holder of, a general business license may seek immediate judicial review in any court of competent jurisdiction as provided by law of any determination rendered by the City Council pursuant to EGMC Section 4.06.225 upon such determination becoming final.

## **Chapter 4.10**

### **SPECIAL BUSINESS LICENSES AND EMPLOYEE PERMITS**

Sections:

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- 4.10.005 License required.
- 4.10.010 Number of licenses required.
- 4.10.015 Business location.
- 4.10.020 Special regulations.
- 4.10.025 Application filing.
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- 4.10.050 Content and display of licenses.
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## **Article I. Applicability and Issuance**

### **4.10.000 Purposes.**

A. There are certain types of enterprises which require special investigation, review and regulation in order to ensure that the public health, safety and welfare is adequately protected. The necessity to conduct such investigation, review and regulation arises for reasons which include, but are not necessarily limited to, the following:

1. The tendency of certain types of enterprises to engage, whether intentionally or unintentionally, in the promotion of crime, whether through the sale of stolen goods or otherwise;
2. The tendency of certain types of enterprises to be placed where criminal activity occurs either by virtue of the type of clientele attracted or for other reasons;
3. The fact that patrons of particular types of enterprises are vulnerable to fraudulent charging or other practices either because of the nature of the business, the type of service or merchandise offered, the circumstances under which the merchandise or service is purchased, or for other reasons;
4. The fact that certain types of enterprises create health or safety risks which require special regulation; and
5. The fact that certain types of enterprises require access to private property, particularly residential property, or frequent residential neighborhoods, generating high risks to the safety of persons and property.

B. Other types of enterprises provide services essential to the health, safety or welfare of the community, and require special regulation in order to ensure delivery of such services in a volume, manner and quality sufficient to ensure protection of the community.

C. The purposes of this chapter are to establish special regulations applicable to the types of enterprises regulated hereunder, and to regulate such enterprises through a special business licensing procedure in order to protect and safeguard the health, safety and welfare of the residents within the City.

### **4.10.005 License Required.**

A. No person shall, unless under and by authority of a valid unexpired and unrevoked special business license, conduct or operate within the City, whether singularly or in connection with another type of enterprise, the following:

1. Any enterprise or activity for which a special business license is required by EGMC Chapters 4.15 through 4.35, inclusive;
2. Antique dealers in firearms, jewelry, art objects, furniture or other valuables;
3. Automobile dismantlers and marketers of used parts for automobiles;
4. Automobile repairs, when the person or firm makes calls at the home or business of the customer to make repairs;
5. Circuses and carnivals, including the maintenance of animals for display to, riding by or petting by children;
6. Sales of concealable firearms, including gunpowder;
7. Home repair services consisting of services related to the repair or maintenance of single-family residential dwellings, mobile homes, or gardens by persons who are not licensed to perform such services by the state of California, including businesses offering energy-saving appliances, equipment, or services, whether in connection with solar, wind or other power;
8. Purchase or sale of metals, including precious and scrap metals;
9. Auto towing, consisting of persons who engage in the business of towing automobiles which require repair, are abandoned on public rights-of-way, or are parked illegally;
10. Repossession or storage of automobiles or any other thing of value;
11. The operator of each booth in a bazaar, flea market, farmer's market, or other similar type of auction established for the purpose of selling merchandise, including food, for private gain;
12. Private security companies;
13. Tree trimmers;
14. Motorcycle sales, including the sale of new and used parts;
15. Wrecking yards, including automobile dismantling and the buying and selling of automobiles for scrap metal or parts;
16. Dating and introduction services;
17. Swimming pool cleaning services;
19. Janitorial, maid, or carpet cleaning services;

20. Pool halls; one pool table or more is a pool hall;

21. Itinerant food vendors;

22. Movie and television productions;

23. Dance clubs, halls, and public dances.

B. A person shall be deemed to operate or conduct an enterprise or activity and violate this section and, if applicable, corresponding prohibitions in EGMC Chapters 4.15 through 4.35, inclusive, if the person, without a special business license in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise or activity for which the license is required.

C. Notwithstanding the foregoing businesses required to obtain a special business license, the City will accept on a reciprocal basis a special business license or employee permit from Sacramento County for businesses that are based outside of the City but deliver mobile-based business services to the residents of the City including, but not limited to, carpet cleaners, janitorial or maid service, lawn care or tree trimming, auto towing and repossession, mobile auto repair, taxicabs, massage, private security, and home repair.

#### **4.10.010 Number of licenses required.**

If a person conducts or operates more than one of the types of enterprises described by EGMC Section 4.10.005, a separate special business license shall be required for each type of enterprise which the person operates or conducts.

A person who operates or conducts more than one store, office, outlet or other branch of a particular type of enterprise described by EGMC Section 4.10.005 shall not be required to obtain more than one special business license for that type of enterprise, regardless of the number of stores, offices, outlets or branches operated or conducted.

#### **4.10.015 Business location.**

Except as otherwise expressly provided, a special business license shall be required for each particular type of enterprise described by EGMC Section 4.10.005 which is operated or conducted within the City, whether or not the enterprise is operated at a fixed location within the City.

An enterprise shall be deemed to be operated or conducted within the City if representatives of the enterprise offer or sell goods or services or provide services within the City, whether the enterprise is operated from a fixed location within another jurisdiction, and whether the enterprise has a fixed location at all.

#### **4.10.020 Special regulations.**

Certain of the types of enterprises described by EGMC Section 4.10.005 are subjected to special regulations governing their operations. These regulations are set forth in EGMC Chapters 4.15 through 4.35. Except as otherwise provided, the provisions of this chapter shall be fully applicable to the enterprises identified by EGMC Chapters 4.15 through 4.35.

The provisions of this chapter shall be independently applicable to any enterprise described by EGMC Section 4.10.005 which are also regulated under the provisions of EGMC Chapter 4.06. The issuance of a general business license to an enterprise described by EGMC Section 4.10.005 shall not excuse the enterprise from the requirement that a special business license be obtained pursuant to the provisions of this chapter. The issuance of a special business license shall not be deemed to relieve the holders of a requirement, under EGMC Chapter 4.06, that a general business license be obtained. A special business license shall not be deemed to authorize operation of an enterprise business at a particular location, if a general business license is required and there is no such license in full force and effect.

#### **4.10.025 Application filing.**

All applications for special business licenses shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action. The City Manager shall verify pursuant to Section 16100 of the Business and Professions Code that before the City issues a special business license to an enterprise as a "contractor," as that term is defined in Division 3, Chapter 9, Article 2, Section 7026 of the Business and Professions Code, that the applicant or licensee is licensed by the State of California Contractors' State License Board.

#### **4.10.030 Application contents.**

The application for a special business license shall be filed on a form and contain such information as is prescribed by the City Manager and the Chief of Police, including the following:

- A. A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;
- B. The address of each location from which the enterprise for which application is made will be operated;
- C. The name and address of the person who owns the enterprise for which application is made;

D. Such information as is necessary to permit the determinations prescribed by EGMC Section 4.10.040(A)(3);

E. Identification of each type and location of enterprise conducted by the owner within the City;

F. Whether or not the applicant or enterprise is a "contractor," as that term is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, and if such contractor is licensed as a contractor by the State of California Contractors' State License Board, with a license in good standing, and the license number and class thereof;

G. Such other and further information as is deemed necessary to administer the provisions of this chapter; and

H. An affirmation under penalty of perjury that the information contained in the application is true and correct.

#### **4.10.035 Investigation.**

The Chief of Police shall conduct such investigation of the background of the owner or owners and persons managing or supervising the enterprise as is deemed appropriate. The Chief of Police shall evaluate each application to determine whether the operation of the enterprise would involve an unreasonable risk to the health, safety or general welfare of the public. Those persons described by EGMC Section 4.10.040(A)(3) shall be fingerprinted and photographed; and consideration shall be given to the criminal record, if any, and character of the owner and other persons connected with the enterprise, the business responsibility of the firm and the owner, and the manner in which the owner intends to conduct the enterprise.

#### **4.10.040 Issuance.**

A. The Chief of Police shall issue the special business license within ninety (90) days after the date of application unless either:

1. The Chief of Police finds in writing that the applicant fails to provide information in connection with the application requested by the Chief of Police as a basis for enabling the Chief of Police to make his or her determination;

2. The Chief of Police finds in writing that any of the material statements made in the application or any information submitted supplementary thereto is incorrect or untrue;

3. The Chief of Police finds in writing that any of the following persons has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a

subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not conduct the enterprise in a law-abiding manner or in a manner which does not subject patrons of the enterprise to risk of harm or criminal, deceitful or otherwise unethical practices:

- a. A general or limited partner of a partnership which possesses an ownership interest in the enterprise;
- b. A joint venturer in a joint venture which possesses an ownership interest in the enterprise and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this section would apply if the partnership or corporation were the sole owner of the enterprise;
- c. A sole proprietor when the enterprise is a sole proprietorship;
- d. An owner of more than one-half of one (0.5%) percent of the voting shares of stock when a commercial corporation possesses an ownership in the enterprise;
- e. A director, when either a commercial or nonprofit corporation possesses an ownership in the enterprise;
- f. A member of a management committee when a partnership or joint venture possesses an ownership interest in the enterprise;
- g. A member of a governing body or other board or committee to which management is entrusted, when an unincorporated association possesses an ownership interest in the enterprise; or
- h. A president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm possessing an ownership interest in the enterprise.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01, et seq., of the California Penal Code, or that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under Section 4852.01, et seq., of the California Penal Code;

4. The Chief of Police makes any finding in writing authorized as a basis for denial of the license by EGMC Chapters 4.15 through 4.35, or finds in writing that the applicant

does not satisfy any requirement applicable to the enterprise for which application is made established by EGMC Chapters 4.15 through 4.35; or

5. The Chief of Police finds in writing that when the applicant or enterprise is a "contractor," as that term "contractor" is defined in Division 3, Chapter 9, Article 2, Section 7026, et seq., of the Business and Professions Code, the applicant has failed to provide sufficient proof, as determined by the Chief of Police, that the applicant is licensed to engage in the business as a contractor by the State of California Contractors' State License Board, and that the license is presently valid, effective, not suspended, and in good standing.

B. If an application does not show on its face a basis for denial, the Chief of Police may, in his or her sole discretion, issue a temporary special business license for a period not to exceed ninety (90) days, pending processing and investigation of the application and final determination thereof.

#### **4.10.045 Conditions.**

The Chief of Police may issue a special business license upon such conditions relating to method or manner of operation of the enterprise as he or she deems necessary to adequately protect members of the public in their patronage or dealings with the enterprise, or to reduce the incidence, detect the commission of, or identify perpetrators of crime. Such conditions may be imposed at the time a special business license is initially issued, upon renewal of the license, or at any time during the term of the license.

Any condition imposed pursuant to the provisions of this section, whether established at the time of issuance, at the time of renewal or during the term of a special business license, shall be embodied, together with the reasons therefor, in a written notice which is served upon the applicant or holder. The condition shall become effective fifteen (15) days following the date of service of the notice thereof, except if an appeal therefrom is filed within the time and in the manner prescribed, the condition shall not become effective until the appeal is finally determined.

#### **4.10.050 Content and display of licenses.**

The special business license shall contain but not be limited to a complete description of the enterprise authorized by the license, the name of the enterprise so licensed, the name and address of the owner or owners of the enterprise, the address of each location of the business covered by the license, and any conditions upon which the license is issued. The license shall be conspicuously posted at each location of the enterprise in full public view.



#### **4.10.055 Changes in status.**

During the term of any special business license issued hereunder, in addition to the information required by EGMC Section 4.02.070, the holder of the license shall file in writing with the Chief of Police any changes in or new locations of the enterprise so licensed. The Chief of Police shall issue an amended license which shows any changed or new locations of the enterprise so licensed.

#### **4.10.060 Renewal of licenses.**

A. Not later than forty-five (45) days prior to expiration of the term of a special business license, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the City Manager and the Chief of Police.

B. The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding license. The Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate. The Chief of Police shall extend the term of the immediately preceding license during the period of any investigation or examination required in order to determine whether the license should be issued.

C. The Chief of Police shall act upon the application for renewal not later than thirty (30) days after the date a valid application is filed. The renewed license shall be issued unless:

1. The Chief of Police finds in writing that one or more of the conditions identified in EGMC Section 4.10.040 apply;
2. The Chief of Police finds in writing that the licensee has violated any term, condition, requirement, or prohibition imposed by this chapter, EGMC Chapter 4.02, or Chapters 4.15 through 4.54 which are applicable to the license or the holder, or any administrative regulations promulgated thereunder, or any other applicable law; or
3. The Chief of Police finds in writing that one or more conditions applicable to the preceding license have been violated.

#### **4.10.065 Employee permits.**

With respect to certain types of enterprises described by EGMC Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to ensure public safety. Personnel required to possess such

minimum qualifications are identified by the provisions of EGMC Chapters 4.15 through 4.35. The procedures set forth in this chapter relating to employee permits shall be applicable to all personnel required by EGMC Chapter 4.15 through 4.35 to possess minimum qualifications which are subject to review by the Chief of Police.

#### **4.10.070 Permit required.**

Whenever under the provisions of EGMC Chapters 4.15 through 4.35 personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a special business license to permit the person to perform such duties or functions unless the person has first applied for and obtained an employee's permit.

#### **4.10.075 Application filing.**

Applications for an employee's permit shall be filed with the City Manager. The City Manager shall receive any fee required for the application, assure that the application is complete, and refer the application to the Chief of Police for processing, investigation, review and action.

#### **4.10.080 Application contents.**

The application for an employee's permit shall be filed on a form and contain such information as is prescribed by the Chief of Police, including the following:

- A. The name, current residential address and e-mail address, if any, of the applicant;
- B. The name and address of the business which has retained the services of the applicant for which the permit is required; and
- C. A description of the duties or function which the applicant is to perform for the business.

#### **4.10.085 Investigation.**

The Chief of Police shall conduct such investigation of the background of the applicant for an employee's permit as is necessary in order to determine whether the minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

#### **4.10.090 Issuance of permit.**

Except as hereinafter provided, the Chief of Police shall issue the employee's permit within thirty (30) days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the permit under regulations prescribed by EGMC Chapters 4.15 through 4.35. If the Chief of Police's investigation has not been completed by the date issuance of the permit is required, but that portion of the investigation which has been completed has disclosed no basis for denial of the permit, the Chief of Police shall issue a temporary employee's permit, the term of which shall extend no longer than one hundred twenty (120) days from the date of issuance. A temporary employee's permit shall expire upon either the date of expiration of its term, the date of issuance of an employee's permit, or the date of service of notice that an employee's permit has been denied. While in force and effect, a temporary employee's permit shall otherwise be accorded the same status as an employee's permit.

#### **4.10.095 Incidents of employee permits.**

An employee's permit shall not be transferable or assignable from one person to another. The permit shall contain such information as the Chief of Police requires, including the permit holder's name and address, the name and address of the enterprise or enterprises retaining his or her services for which the permit is issued, the expiration date of the permit, a description of the duties or functions which the permit authorizes to be performed, and a physical description of the permit holder.

The holder of an employee permit shall carry same on his or her person at all times services authorized by the permit are being performed, and shall display the permit for inspection upon request by any peace officer.

Applications for renewal shall be filed, processed and permits issued in the manner and pursuant to the standards and procedures prescribed by EGMC Sections 4.10.075 through 4.10.090.

### **Article II. Denial and Revocation**

#### **4.10.100 Grounds for denial – Licenses.**

The Chief of Police shall deny an initial application for a special business license if written findings in EGMC Section 4.10.040 are made.

The Chief of Police shall deny an application for renewal of a special business license if any of the written findings described by EGMC Section 4.10.060 are made.

#### **4.10.105 Grounds for denial – Permits.**

The Chief of Police may deny an initial application for or application for renewal of an employee permit if the Chief of Police finds in writing that the applicant therefor is disqualified for the permit under the provisions of EGMC Chapters 4.15 through 4.35.

#### **4.10.110 Method of denial.**

A denial of an initial application or application for renewal of either a special business license or employee permit by the Chief of Police shall be in writing, with the reasons stated therefor. Written notice of the denial, together with a copy of the provisions of this chapter and any provisions of EGMC Chapters 4.15 through 4.35 which are applicable to the license or permit, shall be served upon the applicant pursuant to the provisions of EGMC Section 4.02.090.

Denial of an initial application or application for renewal of a special business license shall prohibit operation of the enterprise at any location within the City.

With respect to denial of an application for renewal of a special business license or employee permit or termination of a special business license pursuant to EGMC Section 4.02.070, the license immediately preceding special business license or the permit immediately preceding the employee permit shall be deemed to be in full force and effect for a period of fifteen (15) days following the date of service upon the applicant of the notice of denial or termination. In the event the applicant files an appeal from the denial or termination in the manner and within the time prescribed by EGMC Section 4.10.115, the immediately preceding special business license or employee permit shall continue in full force and effect during the pendency of the appeal, until the date of final decision by the appellate authority.

#### **4.10.115 Appeals.**

A. The holder of a special business license or employee permit or applicant therefor may file an appeal from the following:

1. The denial of an initial application for or application for renewal of a special business license or employee permit pursuant to the provisions of EGMC Sections 4.10.100 or 4.10.105;
2. The imposition of conditions at the time of issuance of an initial or renewed special business license or during the term thereof, pursuant to the provisions of EGMC Section 4.10.045; or
3. The termination of a special business license as a result of a change in ownership, pursuant to the provisions of EGMC Section 4.02.070.

B. Any such appeal shall be filed pursuant to EGMC Chapter 1.11.

#### **4.10.135 Grounds for revocation and suspension – Licenses.**

Any special business license issued pursuant to this chapter may be suspended for not longer than one year or revoked during its term if the Chief of Police finds in writing that one or more of the following grounds exists:

A. That information in the latest application was untrue as provided in EGMC Section 4.10.040(A)(2);

B. That the Chief of Police has acquired information supporting a finding that one of the persons listed in EGMC Section 4.10.040(A)(3) has a new criminal conviction or a criminal conviction previously undisclosed;

C. That the holder of the license has violated one or more conditions imposed pursuant to EGMC Section 4.10.045; or

D. That the holder of the license has violated any term, condition or requirement or prohibition established by this chapter, EGMC Chapter 4.02, or Chapters 4.15 through 4.54 which are applicable to the license or the holder, or any administrative regulation promulgated thereunder, or any other applicable law.

#### **4.10.140 Grounds for revocation and suspension – Permits.**

Any employee permit issued pursuant to this chapter may be suspended for not more than one (1) year or revoked during its term if the Chief of Police finds in writing the existence of grounds for revocation prescribed by EGMC Chapters 4.15 through 4.35.

#### **4.10.145 Method of revocation or suspension.**

A. The Chief of Police may commence proceedings for the suspension or revocation of a special business license or employee permit by issuing a written notice of suspension or revocation. The notice shall state the reasons for suspension or revocation and shall be served, together with a copy of the provisions of this chapter and any provisions of EGMC Chapters 4.15 through 4.35 which are applicable to the license or permit, upon the holder of the license or permit. Except as provided below, the suspension or revocation shall become effective fifteen (15) days after the date of service unless the holder files an appeal within the time and in accordance with the provisions of EGMC Chapter 1.11. If such an appeal is filed, the suspension or revocation shall not, except as provided below, become effective until a final decision on the appeal is issued.

B. A special business license or employee permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of proceeding for the suspension or revocation of the license or permit,

if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license or permit. In the event the Chief of Police orders a temporary suspension, the notice of suspension or revocation shall be delivered personally to each place of business licensed or to which the permit relates, served upon the licensee or permittee, and shall contain the following:

1. The finding justifying the temporary suspension;
2. The time, date and place at which the licensee or permittee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the Chief of Police to the charges in the notice; and
3. The time and date on which the temporary suspension commences, which shall not be earlier than twenty-four (24) hours following the time and date of delivery of the notice.

#### **4.10.150 Appeal of revocation or suspension.**

Within thirty (30) days following the date on which the notice of suspension or revocation is served, the holder of the special business license or employee permit may file a written appeal pursuant to EGMC Chapter 1.11.

#### **4.10.155 Effect of revocation or suspension.**

The revocation of a special business license or employee permit shall terminate the right of the holder of the license or permit to engage in the enterprise authorized by the license or perform the service authorized by the permit, as the case may be, anywhere within the City for a period of five (5) years following the effective date of revocation. At the conclusion of such period, the former holder may file a written application for issuance of a new license or permit with the City Manager. Upon investigation by the Chief of Police and a new recommendation that must be reviewed by the City Council, the license or permit may be granted or denied by the City Council. The City Council may, in its sole discretion, grant or deny the application pursuant to such terms and conditions as it may prescribe, and may, in addition to other matters, consider factors relating to the rehabilitation of the applicant in making its determination.

In the event of revocation of a special business license, neither the spouse, domestic partner, child, brother, sister or parent of the holder of the revoked license, nor a person possessing an ownership interest in the enterprise for which the license was revoked or who was an employee thereof, shall be entitled to issuance of a special business license for the enterprise except upon filing and review of a new written application filed with the City Manager, investigation by the Chief of Police, and a new recommendation

of the Chief of Police that must be reviewed by the City Council. The Chief of Police may recommend grant of the application to the City Council with such conditions in order to ensure that the person whose conduct constituted the basis for the revocation does not exercise any control or influence over the enterprise or the person to whom the license is issued or the Chief of Police may recommend denial of the application. The City Council may deny the application or grant it with such conditions, in its sole discretion, it deems necessary to protect the public health, safety, and welfare.

The suspension of a special business license or employee permit shall terminate the right of the holder of the license or permit to engage in the enterprise authorized by the license or perform the service authorized by the permit, as the case may be, anywhere within the City for a period of up to one year following the effective date of the suspension. At the conclusion of the suspension, the license or permit is subject to the normal applicable renewal process.

### **Article III. Additional Special License Requirements**

#### **Article IIIa. Dances**

##### **4.10.300 Definitions.**

As used in this Article IIIa, the following terms shall be ascribed the following meanings:

A. "Dance club" means any club or association of persons which conducts dancing for its members or bona fide guests more often than once (1) a month, and to which the public is not admitted.

B. "Club dance" means any dance held by a dancing club.

C. "Public dance" means a gathering of persons in or upon any premises where dancing is permitted with or without charge therefor, and to which premises the public is admitted.

D. "Public dance hall" means a place where dancing is conducted, whether for profit or not for profit, and at which the public is allowed to dance, with or without charge.

##### **4.10.305 License required.**

No person shall operate a public dance, club dance, dancing club or a public dance hall in the City unless under and by authority of a valid, unexpired and unrevoked special business license issued pursuant to the provisions of this chapter and Article IIIa authorizing public dances, club dances, a dance club, or public dance hall. In addition,

such business is also required to apply for and obtain a conditional use permit from the City Planning Department.

#### **4.10.310 Issuance.**

The Chief of Police shall issue the special business license unless, in addition to the grounds prescribed by EGMC Section 4.10.040, the City Planning Department finds in writing that it cannot make the appropriate findings and mitigation measures to justify the issuance of the conditional use permit for the proposed club dance or dancing club.

#### **4.10.315 Hours.**

A. The Chief of Police may grant written permission for any dance hall, public dance or club dance to remain open between 2:00 a.m. and 6:00 a.m. on each New Year's Day. With the foregoing exception, and except as provided below, it shall be unlawful for the owner, operator, proprietor or sponsor of a public dance, club dance or public dance hall to authorize or conduct dancing at any time between the hours of 2:00 a.m. and 12:00 noon.

B. The City Council finds that the crime of operating a motor vehicle while under the influence of alcohol occurs with serious frequency at and immediately following 2:00 a.m., when bars close. For the purpose of reducing the incidence of such crime by delaying the departure of intoxicated persons until they have sobered, the Chief of Police shall, upon written request, issue or amend a special business license for a public dance, club dance or public dance hall, or issue written permission if no such license is required, authorizing the conduct of dancing between 2:00 a.m. and 4:00 a.m., if the Chief of Police finds the following:

1. That the establishment where the dancing is conducted sells alcoholic beverages for on-site consumption in compliance with a license so authorizing issued by the California Alcoholic Beverage Control Board;
2. That the establishment where the dance is conducted will remain unlocked and available for routine and special inspections by law enforcement authorities during the extended dancing hours;
3. That no alcoholic beverages are either sold or consumed on the premises during the extended dancing hours; and
4. That the establishment where the dancing is conducted serves, during the extended dancing hours, a sit-down or buffet meal which is either prepared in an on-site kitchen or provided by a catering service.



C. The above requirements shall constitute on-going conditions of the authorization to conduct dancing during the extended hours, conditions of any special business license which has been issued, and the violation thereof shall constitute grounds for revocation of the permission and of any license.

#### **4.10.320 Exemption.**

Dances held by fraternal organizations, lodges, veterans' organizations, church groups, farm associations, for the members thereof or bona fide guests by schools for the students thereof, or by student groups under the supervision and control of the school authorities, shall be conducted in compliance with EGMC Section 4.10.315, but may be conducted without a special business license and shall not otherwise be subject to the provisions of this Article IIIa.

### **Article IIIb. Poolhalls**

#### **4.10.330 License required.**

No person shall operate a poolhall without possessing a valid, unexpired and unrevoked special business license authorizing the poolhall issued pursuant to the provisions this chapter and Article IIIb.

#### **4.10.335 Poolhalls.**

As used in this Article IIIb, the term "poolhall" shall mean any place where one or more billiard, pool or combination tables are maintained, and where a charge is made for use of such tables by members of the general public.

#### **4.10.340 Minors prohibited.**

A. Except as hereinafter provided, it shall be unlawful for an operator of a poolhall to permit any person who is under the age of eighteen (18) years to be present in a poolhall at a time when pool or billiards are being played; and unlawful for a person under the age of eighteen (18) years to be present in a poolhall at a time when pool or billiards are being played.

B. A person who is under the age of eighteen (18) years may be present in a poolhall at a time when pool or billiards are being played if:

1. The person is accompanied in the poolhall by his or her parent or legal guardian; or
2. A written consent signed by the parent or legal guardian authorizing such presence is filed with the operator of the poolhall.

## **Article IIIc. Movie and Television Productions**

### **4.10.350 Purposes.**

It is not uncommon for motion picture productions to necessitate or otherwise result in the disruption of motor vehicle traffic, the unusual utilization of public facilities, the employment of actual or potentially dangerous explosives or other activity which could endanger public safety, the creation of noise which disturbs the public quiet or convenience, the attraction of crowds of sightseers, or other circumstances which require the commitment of public resources in order to ensure adequate protection of the health, safety and welfare of the community.

The purposes of this Article IIIc are to provide for the licensing of motion picture productions in order to ensure that necessary public resources are provided at the times and in the manner required to protect the health, safety and welfare; that the licensee bears the cost of such public resources; and that the motion picture productions are otherwise conducted under conditions and in a manner which avoids risk to the health, safety or welfare of the community.

### **4.10.355 Definitions.**

As used in this Article IIIc, the following terms shall have the following meanings:

“Motion picture production” shall mean and include any activity attendant to staging or filming or videotaping of commercial motion pictures or television shows, programs, or advertising.

“Still photography” means and includes all activity attendant to staging or making commercial still photographs.

### **4.10.360 City Manager.**

The City Manager or his or her designee is charged with the responsibility of administering the regulations imposed by this Article IIIc, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue special business licenses authorizing motion picture productions, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to motion picture productions and the issuance and administration of special business licenses therefor, as are vested in the Chief of Police under this chapter and EGMC Chapter 4.02. Any reference to the “Chief of Police” shall be deemed to be a reference to the City Manager or his designee in relation to motion picture productions.

#### **4.10.365 License required.**

No person shall use any public or private property, facility or residence within the City for a motion picture production unless under and by authority of a valid, unexpired and unrevoked special business license authorizing the motion picture production issued pursuant to the provisions of this chapter and Article IIIc.

#### **4.10.370 Exceptions.**

The provisions of this Article IIIc shall not be applicable to the following:

A. Reporters, photographers or cameramen in the employ of a newspaper, news service, television station or similar entity engaged in the on-the-spot recording of news events concerning those persons, scenes or occurrences which will be published, telecast or broadcast;

B. Any motion picture production at a studio located within the City;

C. Commercial still photography.

#### **4.10.375 Processing of application.**

Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, the Fire Chief of Cosumnes Community Services District, and any other official whose jurisdiction or authority would be affected by the motion picture production. Each of these officials shall determine whether, with regard to their specific areas of responsibility, any conditions are necessary in order to ensure that the proposed motion picture production does not endanger the public health or safety, whether the commitment of any public resources (including staffing) is necessary in order to minimize disruption caused by or risk to the public health or safety resulting from the motion picture production, and, if so, the estimated cost thereof. Each such official shall submit to the City Manager within fifteen (15) days following the date of filing of a completed application his or her written findings, determinations and requirements.

#### **4.10.380 Issuance.**

Notwithstanding the provisions of EGMC Section 4.10.040, the City Manager shall act upon the application not later than thirty (30) days following the date of filing of the application, and the provisions of EGMC Section 4.10.040(A)(3) shall not constitute grounds for denial of a special business license to conduct a motion picture production.

The City Manager shall issue the special business license within thirty (30) days after the date on which the application is filed unless, in addition to the grounds prescribed by EGMC Section 4.10.040, either the Public Works Director, the Chief of Police or the Fire

Chief of Cosumnes Community Services District finds in writing that the production would constitute a hazard to public safety, and that there are no conditions upon which the license could be issued which would eliminate the hazard.

#### **4.10.385 Conditions.**

Pursuant to the provisions of EGMC Section 4.10.045, the City Manager may issue a special business license authorizing a motion picture production upon conditions which relate to the following:

A. The time, place or manner of conducting the motion picture production, for the purpose of reducing disruption of traffic, disruption of public services, disruption of the public peace or quiet, or the minimization of any hazard to the public safety which could result from the production;

B. The deposit of such cash amounts as may be necessary to cover the costs of any public resources (including personnel) required to be provided by the City or the Cosumnes Community Services District, required in order to facilitate the production or reduce the disruption of traffic, public peace and quiet or safety hazards arising therefrom;

C. If the motion picture production involves a potential risk of a safety hazard to the public, a requirement that the licensee enter into an agreement indemnifying the City and the Cosumnes Community Services District, and, in their capacities as such, their officers, employees and agents, against any liability which may arise out of or result from the production, secured by liability insurance in such amount as is required by the City Manager or his or her designee and in such form and by such an insurer as may be required by the City Attorney.

#### **4.10.390 Disruption of Production.**

A. No person, after first being warned to cease the conduct, shall engage in conduct intentionally designed to disrupt motion picture or television production undertaken pursuant to a license issued under the authority of this chapter.

B. For purposes of this section, conduct which disrupts motion picture or television production includes, but is not limited to:

1. Creating or causing audible interference to the recording of sound;

2. Interfering with the ability of a production to achieve consistent light levels by shining or reflecting light onto a set or at a camera or by utilizing some other artificial means to adversely affect lighting;

3. Interfering with the entrance or egress of production equipment or personnel;

4. Placing any obstacles at any location where production is occurring.

### **Article III.d. Itinerant Food Vendors**

#### **4.10.400 License required.**

No person shall operate lunch wagons, ice cream wagons or any other vehicle for the sale of food upon the streets within the City for the purpose of selling food within residential neighborhoods or commercial centers, unless under and by authority of a valid, unexpired and unrevoked special business license authorizing such activity issued pursuant to the provisions of this chapter and this Article III.d.

Licensees shall comply with the prohibitions contained in EGMC Section 4.54.020.

#### **4.10.405 Definition – “Itinerant food vendor.”**

An itinerant food vendor is any person who sells food from a lunch or ice cream wagon, cart, or other vehicle while parked in residential neighborhoods or commercial centers.

#### **4.10.410 Employee permit required.**

No person shall, as an employee or other person performing services for an owner or proprietor, engage in itinerant food vending without possessing a valid, unexpired and unrevoked employee permit issued pursuant to the provisions of this chapter and Article III.d.

#### **4.10.415 Application for permit.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit to provide services identified by EGMC Section 4.10.400 shall contain a list of each conviction of the applicant, plea of guilty or plea of *nolo contendere*. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

#### **4.10.420 Issuance of permit.**

Upon receipt of an application for an employee permit to perform services as an itinerant food vendor, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit unless he or she finds, pursuant to EGMC Section 4.10.090, any of the following:

A. That the application fails to contain information required by the Chief of Police or EGMC Section 4.10.415, or is otherwise incomplete;

B. That information contained in the application is false or otherwise inaccurate; or

C. That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not perform his or her duties in a law-abiding manner or in a manner which does not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01, et seq., of the California Penal Code or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under Section 482(a) of the California Penal Code.

#### **4.10.425 Revocation of permits.**

An employee permit may be suspended or revoked pursuant to EGMC Section 4.10.140 upon any of the following grounds:

A. Violation of any of the duties, requirements or prohibitions contained in this Article III d;

B. Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to EGMC Section 4.02.085;

C. Misrepresentation of a material fact contained in the application; or

D. That since issuance or renewal of the permit the Chief of Police has acquired information supporting a finding under EGMC Section 4.10.420(C) in relation to the holder of the permit.

### **Article IIIe. Smoking Lounges**

#### **4.10.450 Definitions.**

The definitions contained in this Section shall govern the construction of this Chapter:

A. "Applicant" or "applicant" or "Licensee" shall be the person or representative applying for the Special Business License under this Chapter.

B. "License" or "license" or "Special Business License" shall each mean the Special Business License required under this Chapter.

C. "Person" shall mean any of the following:

1. Any natural person,

2. "Business" that shall include any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, whether or not such employee is retained as an independent contractor or is a volunteer to the business.

3. "Nonprofit entity" that meets the requirements of California Corporations Code section 5003 or any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purpose, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

D. "Smoking lounge" means a business establishment that permits the smoking of tobacco or other combustible substances onsite, including but not limited to establishments commonly known as cigar lounges, hookah bars/cafes, tobacco clubs, or smoking parlors.

#### **4.10.451 License Required.**

A. It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the operation of a Smoking lounge unless the person first obtains and continues to maintain in full force and effect a valid smoking lounge Special Business License issued by the City Manager pursuant to this Chapter.

B. The holding or conducting of any event or activity subject to the provisions of this Chapter without a valid Special Business License therefor pursuant to the provisions of this Chapter, unless expressly exempt hereunder, is declared a public nuisance.

#### **4.10.452 Operating Requirements for Smoking Lounge.**

It is unlawful for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the business of a smoking lounge except in compliance with all of the following requirements:

A. The business or nonprofit entity shall be owner-operated or otherwise comply with the provisions regulating smoking in the workplace set forth in California Labor Code Section 6404.5.

B. No food or beverages, including but not limited to alcoholic beverages, shall be sold or consumed on the premises.

C. No persons under eighteen (18) years of age shall be permitted within the business.

D. No live entertainment, including but not limited to singers, disc jockeys, dancers, or comedians, shall be permitted within the business except as otherwise allowed by the Municipal Code.

E. All business-related activities shall be conducted wholly within a building, with the exception of outdoor seating, which shall be operated in accordance with the Zoning Code. Operation of outdoor barbecues, fire-pits, braziers or lit coals shall not be permitted.

F. No admittance fee, cover charge or requirement of any charge or minimum payment as a condition of entry shall be permitted.

G. No window coverings shall prevent visibility of the interior of the tenant space from outside the premises during operating hours. Any proposed window tint shall be approved in advance by the City Manager or his or her designee.

H. The interior of the business enterprise shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernible to persons of normal visual acuity.

I. Adequate ventilation shall be provided for the heating of coals in accordance with all requirements imposed by the City Manager or his or her designee, or as otherwise required by law.

J. Parking shall be provided using the standard for bars and nightclubs under the Zoning Code.

K. The occupancy shall not exceed the lesser of (1) the occupancy limit for the premises established by the City of Elk Grove or Cosumnes Community Service District Fire Department, or (2) an occupancy limit established as a condition of the license approved pursuant to this Chapter, or any zone variance issued pursuant to Zoning Code.

L. The business or nonprofit entity shall also be in conformity with all other laws.



#### **4.10.453 Application for Special Business License.**

A. Applications for licenses pursuant to this Chapter shall be filed with the City Manager or his or her designee on a form provided by the City Manager and shall pay a nonrefundable application fee in an amount designated by resolution of the City Council and, at least, the following information:

1. The legal name, residence address and telephone number of the owner(s) of the proposed establishment making application;
2. The legal name, residence address and telephone number of the person submitting the application as authorized agent of the owner(s), if applicable;
3. The business name, address and telephone number under which the activity will be conducted;
4. The exact nature and location of the activity for which the license is required and an estimate of the number of patrons of the establishment;
5. A security plan for control of pedestrian and vehicular traffic and prevention of unlawful conduct by employees and patrons (such as assaults, vandalism, littering, theft, sale or use of controlled substances, and consumption of alcohol) within the building(s) and outside in the areas affected by the public attending the event; provided, however, that this requirement shall be excused in the case of a noncommercial activity or event to which the public is invited free of charge and which event shall not be in conjunction with any other commercial activity;
6. A plan for control of noise affecting nearby premises (noise control plan), with special attention to prevention of noise nuisance to nearby residences, if any;
7. The hours of operation of the establishment; and
8. Such other information pertaining to public health and safety as may be required by the City Manager or his or her designee to ensure compliance with the provisions of this Chapter and of the requirements of the Zoning Code and, in addition, any information that the applicant may wish to include.

B. Submitting false or misleading information on the application shall constitute grounds for denial of the application or immediate revocation of the license.

#### **4.10.454 Issuance.**

A. Upon the filing of an application, the City Manager or his or her designee shall determine whether the application is complete. If the application is not complete, the City Manager or his or her designee shall, within ninety (90) days, give written notice by

personal delivery or by first class certified mail, return receipt requested, to the applicant advising that the application is incomplete and cannot be acted upon. The notice shall state what information is needed to complete the application.

B. Upon the filing of a completed application, the City Manager or his or her designee shall conduct an appropriate investigation, including, but not limited to, consultation with the Elk Grove Police Department, Planning Department, and Cosumnes Community Services District and inspection of the premises as needed. Within forty-five (45) business days after receipt of a completed application, the City Manager or his or her designee shall either grant or deny the application, and shall give written notice to the applicant of the decision.

C. An application for a smoking lounge Special Business License pursuant to this Chapter shall be granted, subject to compliance with the requirements set forth in this Chapter and in the Code, unless it is found and determined that issuance of the license would allow the smoking lounge to be held or conducted:

1. In violation of any provisions of this Code, or in violation of any other Federal, State, County, or City law or laws; or
2. In a building or structure which is hazardous to the health or safety of the employees or patrons of the business, activity, or event, or the general public, under the standards established by the Uniform Codes or the California Fire Code, as adopted by the City; or
3. On premises which lack adequate on-site parking areas for employees and the public attending the proposed event or activity, under the standards set forth in the Zoning Code, or any regulations adopted by the City, except for existing uses that are legal and nonconforming with respect to parking; or
4. In a manner in which proposed security measures are determined to be inadequate to deter unlawful conduct on the part of employees or patrons, or to promote the safe and orderly assembly and movement of persons and vehicles, or the proposed noise control plan is determined to be inadequate to prevent disturbance of the neighborhood by excessive noise created by the activity or by patrons entering or leaving the premises.

#### **4.10.455 Appeal – Notice and Hearing.**

An applicant whose application for a smoking lounge license has been denied or has been granted conditionally may appeal such decision pursuant to EGMC Chapter 1.11.

#### **4.10.456 Issuance of License Conditions.**

A. After the decision approving or conditionally approving any license becomes final, the City Manager or his or her designee shall issue the license, for the period requested, but not to exceed one year.

B. The license shall be issued subject to compliance with all operating requirements established by the City as may be required to ensure compliance with City regulations governing the matters contained in the application.

#### **4.10.457 Revocation of License.**

A. On determining that grounds for license revocation or suspension exist the City Manager or his or her designee shall furnish written notice of the proposed suspension or revocation to the licensee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager or his or her designee and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. In addition to any other requirements of this Chapter, any license issued pursuant to the provisions of this Chapter shall be revoked by the City Manager or his or her designee following a hearing on the basis of any of the following:

1. The business or activity has been conducted in a manner which violates one or more of the conditions imposed upon the issuance of the license or which fails to conform to the plans and procedures described in the application, or which violates the occupant load limits set by the City or Cosumnes Community Services District;
2. The applicant has failed to obtain or to maintain all required City, County and State licenses and permits;
3. The license is being used to conduct an activity different from that for which it was issued;
4. The applicant has misrepresented any material fact in the application for license or has not answered each question therein truthfully;
5. The applicant has failed to comply with one or more of the required conditions and has failed to cure such noncompliance after reasonable notice thereof;
6. The building or structure in which the licensed event or activity is held or conducted, or is to be held or conducted, is hazardous to the health or safety of the employees or patrons of the business, activity, or event, or of the general public, under the standards set forth in the Uniform Building or Fire Code;

7. The permitted event or activity creates noise or sound levels that violate any ordinance of the City;

8. The security measures provided are inadequate to deter unlawful conduct on the part of employees or patrons, or to promote the safe and orderly assembly and movement of persons and vehicles, or that the noise control measures provided are inadequate to prevent disturbance of the neighborhood by excessive noise created by patrons entering or leaving the premises where the activity takes place;

B. Written notice of the hearing on the proposed license revocation, together with written notification of the specific grounds of complaint against the business or activity of the applicant, shall be personally delivered or sent by first class certified mail, return receipt requested, to the applicant at least thirty (30) business days prior to the hearing;

C. In the event a Special Business License is revoked pursuant to the provisions of this Chapter, or this Code, another Special Business License under this Chapter shall not be granted to the applicant, or to any other applicant for the subject location, within twelve (12) months after the date of such revocation. The City Manager's or his or her designee's determination following a public revocation hearing shall be based upon written findings and shall be final and conclusive in the matter.

#### **4.10.458 Application to Existing Businesses.**

Any smoking lounge lawfully existing on the effective date of this Chapter which becomes a nonconforming use by reason of the adoption of this Chapter shall cease operation, or otherwise be brought into full compliance with the provisions of this Chapter, not later than either (a) one (1) year following the effective date of this Chapter, or (b) six (6) months following the date of written notice as provided below, whichever is later (the "amortization period"), except that no lawfully existing smoking lounge shall be deemed to be nonconforming for failure to comply with the location and parking requirements established for such uses by this Chapter unless said business is terminated for any reason or voluntarily discontinued for a period of sixty (60) consecutive days or more following the effective date of this Chapter. A smoking lounge which is not operational due to a fire, flood or natural disaster on the effective date of this Chapter shall be deemed a lawfully existing smoking lounge for purposes of this Section, provided such smoking lounge resumes operation within a period of not more than two years from the date of said fire, flood or natural disaster which rendered such business non-operational. Any such lawfully existing smoking lounge may continue to operate, provided said operation is in conformity to all other applicable City, County, State, and Federal laws, until the application pursuant to this Chapter has been acted upon and the decision thereon has become final.

#### **4.10.459 Rules and Regulations.**

The City Manager or his or her designee may adopt rules and regulations that are deemed necessary or expedient for the administration or implementation of this Article as he or she deems necessary, and review, revise, and/or promulgate new or amended rules and regulations as he or she deems necessary.

#### **4.10.460 Enforcement.**

Any person violating any provision of this Article or failing to comply with any of its requirements shall be deemed guilty of an infraction. This article shall be enforced as set forth in Title 1 of this Code.

## **Division 2. Particular Special Business Licenses**

### **Chapter 4.15**

#### **TAXICABS**

Sections:

4.15.000 Purposes.

4.15.005 Definitions.

4.15.010 Application of chapter.

4.15.015 Licenses and permits required.

4.15.020 Owner operators.

4.15.025 Term of license.

4.15.030 Equipment standards, certificate, and inspection.

4.15.035 Taximeter accuracy and certificate.

4.15.040 Rates and charges.

4.15.045 Displays within taxicabs.

4.15.050 Taxicab markings and identification.

4.15.055 Taxicab equipment.

4.15.060 Passenger services.

4.15.065 Administrative regulation of practices.

- 4.15.070 Duties of special business license holders.
- 4.15.075 Specific requirements for taxicab business – Special business licenses.
- 4.15.080 Applications for special business licenses.
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- 4.15.095 Issuance or renewal of employee permit.
- 4.15.097 Employee permit void upon termination of employment.
- 4.15.099 Employee permit – Controlled substance and alcohol testing – Reporting test results.
- 4.15.100 Revocation or suspension of special business licenses.
- 4.15.105 Revocation or suspension of employee permits.

#### **4.15.000 Purposes.**

Taxis are an integral component of the public transportation system within the City of Elk Grove. They provide vital and necessary transportation services to the local and traveling business community, tourists, the elderly and handicapped, and others. Unethical business practices, deception of the traveling public, criminal conduct, or conditions which threaten the safety of passengers would damage the image of the City, impair tourism and harm the economic development and well-being, deprive the public of vitally necessary transportation, require the commitment of inordinate financial resources to law enforcement, and otherwise be detrimental to the health, safety and welfare of the residents of the City.

Pursuant to the provisions of Section 5353(g) of the Public Utilities Code and Section 53075.5 of the Government Code, the purposes of this chapter are to ensure that the taxi industry delivers transportation services to the public in a lawful, ethical, safe and convenient manner for the protection and promotion of the health, safety, welfare and convenience of the residents of the City.

#### **4.15.005 Definitions.**

Unless the provision or the context otherwise requires, the definitions set forth in this section govern the construction of this chapter.

A. "Taxicab" shall mean every motor-propelled vehicle, except sight-seeing and interurban buses, which is designed for carrying not more than eight (8) persons excluding the driver, which is used solely or mainly for the transportation of passengers for compensation over the public streets of the City, irrespective of whether the operations extend beyond the boundaries of the City, and between such points and over such route as may be directed by the passenger.

B. "Taximeter" shall mean and embrace any instrument or device attached to a vehicle and designed or intended to measure mechanically the distance traveled by such vehicle, to record the time the vehicle is in waiting, and to indicate upon such record by figures or designs the fare to be charged in dollars and cents.

C. "Taxicab business" shall mean the practice of owning or possessing an ownership interest in one or more taxicabs or providing direction, management or control, for the purpose of providing, assisting in the provision of, or coordinating the provision of taxicab services to members of the general public.

#### **4.15.010 Application of chapter.**

Except as otherwise specifically provided, the provisions of this chapter and EGMC Chapter 4.10 shall not apply to the operation of taxicabs transporting passengers from a point outside the City to a destination within the City, or en route from a point outside the City to a destination outside the City.

#### **4.15.015 Licenses and permits required.**

Except as provided by EGMC Section 4.15.010, within the City: no person shall operate or conduct a taxicab business unless under and by authority of a valid, unexpired, and unrevoked special business license authorizing such taxicab business issued pursuant to the provisions of EGMC Chapters 4.02 and 4.10 and this chapter; and no person shall operate a taxicab without a valid, unexpired, and unrevoked employee permit issued pursuant to the provisions of EGMC Chapters 4.02 and 4.10 and this chapter.

#### **4.15.020 Owner operators.**

A person who owns or leases as lessee or possesses another ownership interest in a taxicab and who operates the taxicab shall be required to qualify for and obtain an employee permit, and, unless the taxicab is covered by a special business license issued to another person, a special business license.

#### **4.15.025 Term of license.**

The term of a special business license authorizing a taxicab business, and an employee permit, shall be one (1) year.

**4.15.030 Equipment standards, certificate, and inspection.**

A. A taxicab shall be in compliance with applicable equipment standards provisions of the California Vehicle Code or any administrative regulations pertaining to safety issued by the Chief of Police pursuant to the provisions of EGMC Section 4.02.085.

B. The holder of a special business license shall provide to the Chief of Police for each taxicab a state of California certificate of compliance or other writing, issued by a state of California certified examiner or examiners, dated not more than twelve (12) months preceding the date of application or renewal of the license, whichever is applicable, and evidencing that the taxicab complies with prevailing lamp and brake equipment standards as provided in subsection (A) of this section. The certificate shall be maintained within the taxicab and shall be available for inspection upon request by any authorized representative of the City at any time. The Chief of Police shall accept (in lieu of a state of California certificate of compliance or other writing, issued by a state of California certified examiner or examiners), a certificate or other writing issued by the city or county of Sacramento, dated not more than twelve (12) months preceding the date of application or renewal of the special business license, whichever is applicable, verifying compliance with any and all vehicle safety standards enforced by the city or county of Sacramento which are also enforced by the City of Elk Grove.

C. It shall be unlawful for the holder of an employee permit to operate, and unlawful for the holder of a special business license to authorize, direct or otherwise allow operation of a taxicab which is not in compliance with subsection (A) of this section; or, which is not covered by an unexpired certificate required by subsection (B) of this section. When in possession and control of a taxicab, it shall be unlawful for the operator to fail to provide, upon request, to an authorized representative of the City an unexpired certificate as required by subsection (B) of this section.

D. The Chief of Police shall, in the Chief of Police's sole discretion, have the authority to require inspections of taximeters, lamps, brakes, and emission control, or other vehicle equipment, to verify compliance of the taxicab with applicable provisions of the California Vehicle Code, this chapter, or any administrative regulation pertaining to safety issued by the Chief of Police pursuant to the provisions of EGMC Section 4.02.085. If it is found that the taxicab or equipment is in such condition that its operation is in violation of the State Vehicle Code, the Chief of Police shall, in accordance with Section 24004 of the State Vehicle Code, prohibit the use of such taxicab, and the holder of the special business license permit and the holder of the employee permit shall not use such taxicab until such time as it has been brought into



compliance with the State Vehicle Code. Continued use of the vehicle while in such violation of the State Vehicle Code shall be grounds for suspension and revocation of the special business license.

#### **4.15.035 Taximeter accuracy and certificate.**

A. Each taximeter utilized in a taxicab shall at all times be of a type authorized by, comply in relation to accuracy with, and be operated and maintained in compliance with any and all statutes and administrative regulations of the state and any administrative regulations issued by the Chief of Police pursuant to the provisions of EGMC Sections 4.02.085 and 4.15.065. The City will accept a certificate of inspection and testing of taximeters performed by the city or county of Sacramento and may demand a copy of such current inspection certificate. However, taximeters utilized in a taxicab shall, at any time, be subject to inspection and testing by the City or its delegate to determine compliance with the requirements of this section.

B. It shall be unlawful for any person holding an employee permit to operate a taxicab, and unlawful for any person holding a special business license to authorize, direct or otherwise allow operation of a taxicab containing a taximeter which is not in compliance with or is utilized in violation of any and all statutes and administrative regulations of the state and any administrative regulations issued by the Chief of Police.

C. The holder of a special business license shall provide to the Chief of Police for each taxicab a certificate or other written evidence issued by the Sacramento County Department of Weights and Measures, or issued by a state of California registered device repairman, indicating that the taximeter has been tested not more than twelve (12) months preceding the special business license application or renewal date, whichever is applicable, and certifying the accuracy of the taximeter attached to the taxicab.

#### **4.15.040 Rates and charges.**

Each person holding a special business license shall file with the Chief of Police a written schedule, as prescribed by the Chief of Police, showing all rates and charges to be imposed in connection with services offered by taxicabs covered by the license. No rate or charge shown on such a filed schedule shall be increased, and no rate or charge not shown on such schedule shall be imposed, earlier than the day following the date upon which a new schedule of rates and charges showing the increase or additional rate or charge is filed with the Chief of Police. No rate or charge not shown on such schedule shall be imposed. Each change in a rate or charge shall be the subject of a new schedule which comprehensively shows all rates and charges, and the filing of supplementary schedules or amendments to schedules which do not show all rates and charges shall not constitute compliance with the requirements of this section.

Each person holding a special business license or employee permit shall file with the Chief of Police, within ten (10) days following the receipt of written request by the Chief of Police, such written explanation of rates and charges identified in a filed schedule as is requested by the Chief of Police.

It shall be unlawful for any holder of an employee permit to charge or impose, and unlawful for the holder of any special business license to authorize, direct, or otherwise allow the charging or imposition of, a rate or charge for service in excess of those prescribed by or of a type which is not shown on a schedule which has been filed with the Chief of Police, and to charge or impose any rate from that schedule prior to the day after such schedule has been filed with the Chief of Police.

#### **4.15.045 Displays within taxicabs.**

It shall be unlawful for any person holding an employee permit to operate a taxicab, and unlawful for any person holding a special business license to authorize, direct, or otherwise allow operation of a taxicab, unless there is displayed within the taxicab, in a location which may be viewed by any and all passengers, the following:

- A. A copy of the valid, unexpired and unrevoked employee permit held by the operator of the taxicab;
- B. A rate schedule identical to the rate schedule filed with the Chief of Police pursuant to EGMC Section 4.15.040 showing all rates and charges which may lawfully be levied or imposed; and
- C. The register display of any taximeter which is utilized.

#### **4.15.050 Taxicab markings and identification.**

A. Each taxicab shall be equipped with a top light containing light or lights which are affixed to the roof of the taxicab. The top light shall be illuminated in nondaylight hours when the taxicab is available for hire. The word "taxicab," "taxi," "cab," the business name of the owner, or the words identifying the vehicle as a taxicab shall be visible on the top light.

B. Each taxicab covered by a special business license shall be painted with a uniform color scheme applicable to all taxicabs covered by the license and a business shall have the exclusive right to the color scheme used by its taxicabs within the jurisdiction of the county of Sacramento. The Chief of Police can review and require changes to any color scheme if he or she finds that such color scheme is too similar to that of another taxicab business and is likely to mislead or confuse the public as to the proper operator of a taxicab.

C. There shall be displayed on each exterior side of a taxicab in full view of prospective customers the following:

1. The business name and telephone number of the holder of the special business license for the taxicab, in letters not less than two (2") inches in height and width; and

2. A rate schedule in the following format:

FIRST MILE: (fee)\*

ADD'L MILES: (fee/mi.)\*

\*Subject to time clock

All letters and numbers in the first two lines of the above format shall be not less than one-and one-half (1.5") inches in height and width. The third line of the above format shall be in letters not less than three-quarters (0.75") of an inch in height and width. In letters not less than one-and-one-half (1.5") inches in height and width and adjacent to the schedule required above, any additional types of fees to be charged and the amount of such fees may be stated. The fees shall be identical to the ones filed with the Chief of Police pursuant to EGMC Section 4.15.040.

D. It shall be unlawful for the holder of any employee permit to operate a taxicab, and unlawful for the holder of a special business license to authorize, direct, or otherwise allow the operation of a taxicab, which does not comply with the requirements of this section.

#### **4.15.055 Taxicab equipment.**

A. Each taxicab shall be equipped with an operative two-way radio dispatch system approved by the Federal Communications Commission for commercial use, and an operative taximeter which is in compliance with the requirements of EGMC Section 4.15.035.

B. It shall be unlawful for the holder of any employee permit to operate a taxicab, and unlawful for any holder of a special business license to authorize, direct, or otherwise allow operation of a taxicab, which does not contain an operative radio dispatch system, and a taximeter, as required in subsection (A) of this section.

#### **4.15.060 Passenger services.**

It shall be unlawful for any person who holds an employee permit to do, and unlawful for any person who holds a special business license to authorize, direct, or otherwise allow the operator of a taxicab to do, any of the following:

- A. Transport a greater number of passengers in a taxicab than the rated seat capacity of the taxicab;
- B. Fail to answer all calls received for taxicab services in the order of receipt of the calls;
- C. Refuse, upon request, to give a passenger of a taxicab a written receipt showing the fare due, and the miles and minutes employed;
- D. Drive passengers of a taxicab via indirect or circuitous routes for the primary purpose of obtaining higher fares or fees;
- E. Refuse to provide taxicab service on the basis of the short length of the prospective ride;
- F. Pick up additional passengers without the prior consent of any passenger who is already in the taxicab;
- G. Knowingly fail to report to the holder of the special business license for the taxicab all property of value left by a passenger in the taxicab within twenty-four (24) hours of discovery of such property;
- H. Fail to throw the flag of the taxicab's taximeter to the nonrecording position at the termination of each and every service;
- I. Fail to call attention of the passenger of a taxicab to the amount registered on a taximeter at the termination of each and every service; or
- J. Throw the flag of a taximeter in a recording position when the taxicab is not actually engaged.

#### **4.15.065 Administrative regulation of practices.**

Pursuant to administrative regulations issued under the provisions of EGMC Section 4.02.085, the Chief of Police shall be authorized to prohibit specified types and methods of calculating fees or other business practices in connection with the provision of taxicab services, and impose specific duties, obligations or prohibitions in connection with the provision of taxicab services, when the Chief of Police determines that such regulations are necessary to protect the public against deceptive, fraudulent, misleading, discriminatory, or other similar detrimental acts or omissions associated with the delivery of taxicab services.

#### **4.15.070 Duties of special business license holders.**

It shall be the duty and responsibility of each person who holds a special business license to:

- A. Fully advise and inform all operators of taxicabs covered by the license of the provisions of this chapter, any and all administrative regulations issued hereunder, and any and all conditions upon which the special business license is issued; and
- B. Direct, control and supervise operators of taxicabs covered by the license for the purpose of identifying, correcting and prohibiting future or repeated violations of the provisions of this chapter, any administrative regulations issued hereunder, or any conditions upon which the special business license is issued.

#### **4.15.075 Specific requirements for taxicab business – Special business licenses.**

A. Each person who holds a special business license shall during the entire term of the license:

- 1. Maintain or be associated with an office situated within the geographical boundaries of the City where some person in charge can be contacted in person or by telephone weekdays from 8:00 a.m. to 5:00 p.m.;
- 2. Maintain a two-way radio dispatch system approved by the Federal Communications Commission for commercial use which is in contact with all taxicabs covered by the license during all times the taxicabs are in service;
- 3. Maintain in full force and effect at no cost to the City a comprehensive automobile and general liability insurance policy in an amount no less than Three Hundred Fifty Thousand and no/100<sup>ths</sup> (\$350,000.00) Dollars single limit per occurrence, issued by an insurer rated A-VII or better by A.M. Best's Insurance Guide, or an insurer approved by the City's Risk Manager, naming the City and, in their capacities as such, its officers, employees and agents as insureds, covering all losses and damages as specified in this subsection, stipulating that the policy will operate as primary insurance and that no other insurance effected by the City or other named insured will be called on to contribute to a loss covered thereunder, and providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the license, without thirty (30) days written notice to the City's Risk Manager from the insurance company prior to the effective date of such cancellation or change in coverage. Such service shall be by first class certified mail, return receipt requested.

Notwithstanding the provisions of EGMC Section 4.02.100, violation of this subsection by the holder of a special business license shall constitute a misdemeanor as provided by EGMC Chapter 1.04;

4. Assume the defense of and indemnify and hold harmless the City and, in their capacities as such, its officers, employees and agents from and against all actions, claims, losses, damages, liability, costs and expenses of every type and description, including, but not limited to, attorneys' fees, to which any or all of them may be subjected by reason of, or resulting from, directly or indirectly, in whole or in part, the acts or omissions of the licensee or the licensee's agents, officers or employees, directly or indirectly arising from the operation of a taxicab. The foregoing is not intended to and shall not be construed to limit any responsibility or liability to which the licensee may be subjected to under other laws;

5. In the event of cancellation, expiration, or change in insurance coverage resulting in noncompliance with subsection (A)(3) of this section, the licensee shall notify the City of the cancellation, expiration, or change within three (3) days after its effective date by submitting a written notice to the City's Risk Manager. The giving of notice as provided herein shall not stay the temporary suspension of the special business license pursuant to EGMC Section 4.15.100(B), which suspension shall remain in effect until required insurance is reinstated, or as otherwise provided in EGMC Section 4.15.100.

B. In addition to any other requirements of this chapter and EGMC Chapters 4.02 or 4.10, a special business license shall not be issued to any person who fails to demonstrate to the satisfaction of the City's Risk Manager fulfillment of the requirements specified in this section.

#### **4.15.080 Applications for special business licenses.**

In addition to the matters prescribed by EGMC Sections 4.10.030 or 4.10.060, as applicable, an application for a special business license, or an application for the renewal of a special business license, to engage in the taxicab business shall contain the following:

A. The name, business address and telephone number of the applicant, and if the applicant is not a natural person, a copy of the articles of incorporation, bylaws, partnership agreement or other written instrument by which the entity is established;

B. A description of the manufacturer, model and model year, the vehicle identification number, the state vehicle license number, and the name and address of each person who is a registered owner, possessor of a leasehold interest, and possessor of any other ownership or security interest in each taxicab to be covered by the license;

C. The serial number of each taximeter to be utilized in a taxicab, as required by EGMC Section 4.15.055(A), together with the state vehicle license number of the taxicab to which the taximeter is assigned;

D. The serial number of each radio system to be utilized in a taxicab, as required by EGMC Section 4.15.055(A);

E. A description of the color scheme by which each taxicab will be identified, as required by EGMC Section 4.15.050(B);

F. A copy of certificates or other writings as required by EGMC Sections 4.15.030 and 4.15.035;

G. A copy of the policy or policies of insurance required by EGMC Section 4.15.075(A)(3);

H. The written schedule of all rates and charges for hire of the taxicab as required by EGMC Section 4.15.040;

I. The address and telephone number and name of the person responsible for operation of the business office required by EGMC Section 4.15.075(A)(1);

J. The address and telephone number and name of the person responsible for operation of the radio dispatch system required by EGMC Section 4.15.075(A)(2).

#### **4.15.082 Issuance or renewal of special business licenses.**

Upon receipt of an application for a special business license, or an application for the renewal of a special business license, the Chief of Police shall conduct such investigation pursuant to EGMC Sections 4.10.035 or 4.10.060 as applicable, and as deemed necessary. The Chief of Police shall issue a special business license, or renewal, unless the Chief of Police finds pursuant to EGMC Sections 4.10.040 or 4.10.060, as applicable, or unless the Chief of Police finds in writing any of the following:

A. The applicant or license holder has failed to comply with the requirements specified in EGMC Sections 4.15.030, 4.15.035, 4.15.040, 4.15.045, 4.15.050, or 4.15.055;

B. The applicant or license holder has failed to comply with the requirements specified in EGMC Section 4.15.075;

C. The license holder or applicant has authorized, directed, or otherwise allowed operation of a taxicab for which the insurance coverage required by EGMC Section 4.15.075 is not in effect;

D. The applicant or holder of a license has submitted a false declaration regarding testing for a controlled substance, alcohol, or both, required by this chapter;

E. The applicant or license holder has failed to notify the Chief of Police of the termination of employment of the holder of an employee permit within three (3) days of such termination;

F. The applicant or license holder has authorized, directed, or otherwise allowed a person or employee without a valid employee permit to operate a taxicab;

G. The applicant or license holder has failed to comply with any condition, requirement, or prohibition of this chapter; or that there exists any basis established by EGMC Chapters 4.02 or 4.10 or this chapter for the denial or revocation of a special business license application or renewal, as applicable.

#### **4.15.085 Contents of licenses – Supplementary information.**

Each special business license shall consist of a certificate which identifies the name and address of the applicant, the date of issuance and the date of expiration. Each such license shall have attached thereto a listing of the state vehicle license number, manufacturer, model, model year, and vehicle identification number of each taxicab which the license covers, and the serial number of each taximeter which the license covers.

During the term of any such license, the holder thereof shall immediately provide in writing to the Chief of Police changes in vehicles and taximeters to be covered by the license.

#### **4.15.090 Applications for employee permits.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit, or an application for the renewal of an employee permit, to operate a taxicab shall contain the following:

A. The number of a valid California driver's license issued to the applicant, and the date of license expiration;

B. A statement of whether the applicant's California driver's license has ever been revoked or suspended and, if so, the reason or reasons for such revocation or suspension;

C. A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of *nolo contendere*. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;



D. A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control of a motor vehicle;

E. A declaration by a taxicab employer that the applicant is employed by or has an offer of employment by that employer to operate a taxicab, or a declaration that the applicant is a self-employed independent driver;

F. A declaration by a taxicab employer that the applicant who is employed by or has an offer of employment with the employer, or by the applicant if the applicant is a self-employed independent driver, that the applicant has been tested for controlled substances (and alcohol for permit renewal) in accordance with Section 53075.5 of the Government Code and the results thereof are negative;

G. If the applicant is a self-employed independent driver, test results from the controlled substance (and alcohol for permit renewal) test shall be reported to the Chief of Police in accordance with Section 53075.5 of the Government Code and are to be made a part of the application;

H. The name of the taxicab business which the applicant is employed by or has an offer of employment from, or if the applicant is a self-employed independent driver, the name of the taxicab business the applicant is doing business as or leases the taxicab vehicle from;

I. A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

J. A list of all prescription medicine which the applicant takes on a regular or episodic basis;

K. Such other information as may be required by the Chief of Police to further the purposes of this chapter, EGMC Chapter 4.02 or 4.10.

#### **4.15.095 Issuance or renewal of employee permit.**

Upon receipt of an application for an employee permit, or the application for the renewal of an employee permit, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit or renewal of the permit pursuant to EGMC Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in EGMC Section 4.10.090 or the Chief of Police finds in writing any of the following:

A. That the application fails to contain information required by the Chief of Police or EGMC Section 4.15.090, or is otherwise incomplete;

B. That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

C. That information contained in the application is false or otherwise inaccurate;

D. That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not operate the taxicab in a law-abiding manner or in a manner which does not subject members of the traveling public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a permit or a renewal shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01, et seq., of the California Penal Code; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under Section 4852.01, et seq., of the California Penal Code. Conviction of a moving traffic violation shall constitute grounds for denial of the permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction there is a substantial risk that the applicant would not operate the taxicab in a law-abiding manner or in a manner which does not subject members of the traveling public to risk of harm;

E. That the applicant's California driver's license has been revoked or suspended;

F. That the applicant is not employed or has no offer of employment as a taxicab driver, or is not a self-employed independent taxicab driver;

G. That the applicant has tested positive for controlled substances (or for permit renewal, controlled substances and alcohol), in accordance with Section 53075.5 of the Government Code;

H. That the applicant refuses or fails to submit to a controlled substance, alcohol test, or both, as required by Section 53075.5 of the Government Code; or

I. One or more of the grounds for permit revocation or suspension exist pursuant to EGMC Section 4.15.100.

**4.15.097 Employee permit void upon termination of employment.**

The employee permit shall become void upon termination of employment of the holder of an employee permit by the holder of a special business license. If the holder of the employee permit is a self-employed independent operator, the employee permit shall become void on the date upon which the holder of the permit no longer owns, or has a leasehold interest in a taxicab vehicle, or when the taxicab operated by the holder of the permit is no longer covered by the holder of the special business license. A holder of an employee permit shall return his or her employee permit to the Chief of Police within three days after the occurrence of any of the events described in this paragraph.

The holder of the special business license employing the holder of the employee permit, if applicable, shall notify the Chief of Police within three days upon termination of the holder's employment.

**4.15.099 Employee permit – Controlled substance and alcohol testing – Reporting test results.**

A.

1. All initial applicants and renewal applicants for an employee permit shall take and pass with negative test results a controlled substance test, an alcohol test and as otherwise required by this chapter or Section 53075.5 of the Government Code. The test or tests, as applicable, for an employee permit shall be taken no more than thirty (30) days preceding the date the application for the employee permit is filed, or the date the application for renewal is filed, or the date the application for the renewal is filed if the employee permit was allowed to expire.

2. When test results of a self-employed independent applicant or holder of an employee permit are positive for alcohol, a controlled substance, or both, the Chief of Police shall report such results to the taxicab leasing company, if any, on record with the Chief of Police. When test results of an applicant or holder of an employee permit who is employed by or has an offer of employment by a taxicab employer are positive for alcohol, a controlled substance, or both, the employer shall report such results to the Chief of Police.

3. Any holder of an employee permit whose employee permit has been suspended or revoked for positive test results of a controlled substance, alcohol, or both, for a test required by this chapter or Section 53075.5 of the Government Code shall not be reinstated as a driver of a taxicab or as a permit holder, nor shall a new permit be

issued, until the requirements for rehabilitation and return to duty in accordance with Section 53075.5 of the Government Code are satisfied.

B. The Chief of Police, upon reasonable suspicion to believe that the holder of an employee permit has violated the prohibitions of Section 53075.5 of the Government Code for alcohol, a controlled substance, or both, shall require the holder of such permit to take a controlled substance, alcohol test, or both, in accordance with Section 53075.5 of the Government Code. Such reasonable suspicion shall be based upon specific, contemporaneous, articulable observations concerning appearance, behavior, speech or body odors of the holder. The observations may include indications of the chronic and withdrawal effects of controlled substances. Alcohol testing may be required if such observations are made during, just preceding, or just after the period of the day that the holder is required to operate the taxicab.

Such reasonable suspicion testing as is required by the Chief of Police shall be taken by the holder of the permit within five days after the Chief of Police gives notice of the requirement. Notice shall be given to the holder of the permit, and to the holder's employer if the holder is not self-employed. Notice shall be deemed effective upon depositing the notice in the mail, first class, postage prepaid, and addressed to the holder of the permit and the holder's employer, if applicable, at the last address on record with the Chief of Police. Notwithstanding the provision of EGMC Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend an employee permit effective upon the Chief of Police making a finding in writing pursuant to this section requiring reasonable suspicion testing and the holder of the permit fails to take the test. The prior twenty-four (24) hour notice provision of EGMC Section 4.10.145 to the holder of the employee permit shall not be required prior to such temporary suspension. The Chief of Police shall, within twenty-four (24) hours of the commencement of such temporary suspension, serve the notice in the manner and as otherwise required by EGMC Section 4.10.145 and shall thereafter permit the holder of the permit to respond to the Chief of Police as required by EGMC Section 4.10.145. The temporary suspension shall continue until the holder of the employee permit submits to such required testing, or pending expiration of the time for appeal or exhaustion of an appeal pursuant to the commencement of a proceeding for the suspension or revocation of the permit, whichever occurs first.

#### **4.15.100 Revocation or suspension of special business licenses.**

A special business license shall be revoked or suspended pursuant to the grounds set forth in EGMC Section 4.10.135 or upon a finding in writing of one or more of the following grounds:

A. Upon receipt by the Chief of Police of written notice from an insurer of cancellation, expiration or change in insurance coverage resulting in noncompliance with EGMC Section 4.15.075(A)(3); or upon receipt of notice from the holder of the special business license pursuant to EGMC Section 4.15.075(A)(5), whichever occurs first; or, that the holder of a special business license has operated a taxicab for which the insurance coverage as required by EGMC Section 4.15.075(A)(3) was not in effect.

Notwithstanding the provision of EGMC Section 4.10.145 to the contrary, the Chief of Police shall temporarily suspend a special business license effective upon the Chief of Police making a finding pursuant to this subsection in writing. The prior twenty-four (24) hour notice provision of EGMC Section 4.10.145 to the holder of the special business license and the place of business thereof shall not be required prior to such temporary suspension. The Chief of Police shall, within twenty-four (24) hours of the commencement of such temporary suspension, serve the notice in the manner and as otherwise required by EGMC Section 4.10.145 and shall thereafter permit the holder of the license to respond to the Chief of Police as required by EGMC Section 4.10.145. Such temporary suspension shall continue until the Chief of Police receives written notice from an insurer indicating compliance with the requirements of EGMC Section 4.15.075(A)(3), or, pending expiration of the time for appeal or exhaustion of an appeal pursuant to a proceeding for the suspension or revocation of the license, whichever occurs first;

B. The holder of a special business license has failed to notify the Chief of Police of cancellation, expiration, or change of insurance as required by EGMC Section 4.15.075(A)(5);

C. The holder of a special business license has submitted a false declaration regarding controlled substance, alcohol testing, or both, required by this chapter;

D. The holder of a special business license has allowed a person, an employee, or holder of an employee permit to operate a taxicab knowing that the operator tests positive, as required by Section 53075.5 of the Government Code or this chapter, for a controlled substance, alcohol, or both;

E. The holder of a special business license has allowed a person or an employee without a valid employee permit to operate a taxicab;

F. The holder of a special business license has failed to notify the Chief of Police of the termination of an employee holding an employee permit pursuant to EGMC Section 4.15.097; or

G. Any other failure of the holder of a special business license to comply with any condition, requirement, or prohibition of this chapter or EGMC Chapter 4.02 or 4.10; or a

finding of grounds for denial of the license, or the denial of a renewal, pursuant to EGMC Section 4.10.100; or, a finding made pursuant to EGMC Section 4.15.082.

**4.15.105 Revocation or suspension of employee permits.**

An employee permit shall be revoked or suspended pursuant to EGMC Section 4.10.140 upon any of the following findings in writing:

A. The holder of the employee permit has violated any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to EGMC Section 4.02.085 or 4.15.065;

B. The holder of the employee permit has misrepresented a material fact contained in the application for the permit or renewal;

C. That since issuance of the permit or renewal the Chief of Police has acquired information supporting a finding prescribed by EGMC Section 4.15.095(D) in relation to the holder of the employee permit;

D. That the holder of the employee permit operated a taxicab with an invalid, suspended or revoked California driver's license;

E. That the holder of the employee permit has tested positive for any controlled substance, or alcohol, or both, pursuant to a test taken in accordance with Section 53075.5 of the Government Code;

F. That the holder of the employee permit, or his or her employer, has submitted a false declaration regarding testing for a controlled substance, or alcohol, or both, pursuant to a test required by Section 53705.5 of the Government Code;

G. The holder of the employee permit has operated a taxicab in an unsafe manner without regard for the safety and welfare of passengers, pedestrians, other drivers, or property. Factors to be considered in reaching this finding are that the holder of the employee permit has suffered a conviction of one or more moving violations of the California Vehicle Code, or, by conduct which has placed any passenger, motorist, pedestrian, or property at unreasonable or unnecessary risk for physical harm, damage to property, or deceitful or fraudulent practices;

H. That the holder of the employee permit refuses or fails to submit to testing for a controlled substance, alcohol, or both, as required by Section 53075.5 of the Government Code or this chapter; or

I. Any other failure of the holder of the employee permit to comply with any duty, condition, requirement, or prohibition of this chapter or EGMC Chapter 4.02 or 4.10 or a finding made pursuant to EGMC Section 4.15.095.

## **Chapter 4.16**

### **MEDICAL CANNABIS DISPENSARIES**

#### Sections:

- 4.16.000 Purpose.
- 4.16.005 Definitions.
- 4.16.010 Special business license and employee permit required.
- 4.16.015 Notice to community of application for business license.
- 4.16.020 Conditional use permit required.
- 4.16.025 Business hours of dispensaries.
- 4.16.030 Prohibited ancillary activities.
- 4.16.035 Prompt removal of solid wastes.
- 4.16.040 License application.
- 4.16.045 Maintenance of certifications and plans.
- 4.16.050 Confidentiality of plans.
- 4.16.055 Application for employee permits.
- 4.16.060 Issuance or renewal of employee permit.
- 4.16.065 Employee Permit void on termination.
- 4.16.100 Suspension or revocation.

#### **4.16.000 Purpose.**

The people of the state of California passed Proposition 215, the Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment. The Legislature of the State of California passed SB 402 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the people of the state of California, by passing Proposition 215, and the Legislature of the State of California, by passing SB 402, have provided for the

medical use of marijuana and, with that in mind, the City Council wishes to ensure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the city code, and recommended that the City Council approve the proposed amendment. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the city code, at which time public testimony was taken and duly considered. The City Council finds that the revised code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Section 65860 of the Government Code. The establishment of medical cannabis dispensaries is contemplated by Section 11362.5 et seq., of the Health and Safety Code. Medical cannabis dispensaries create adverse secondary effects, including, but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, an increase in illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

**4.16.005 Definitions.**

A. "Medical cannabis dispensary" means a business enterprise where qualified patients or primary caregivers receive dispensation of limited doses of medical-grade cannabis to use in the alleviation of pain and suffering associated with certain illnesses.

B. "Qualified patient" means a person whose primary care provider has issued a prescription to allow the person to purchase medical-grade cannabis for consumption for the principal purpose of alleviating pain and suffering associated with certain serious illnesses.

C. "Primary caregiver" means a family member or paid caregiver for a qualified patient who is authorized to receive medical cannabis for the purpose of giving doses to the qualified patient.

D. "Confidentiality plan" means an approved written plan containing policies and procedures of a medical cannabis dispensary intended to assure maintenance of the privacy of qualified patients and primary caregivers.

E. "Security plan" means an approved written plan containing policies and procedures of a medical cannabis dispensary intended to assure the secure handling and storage of cannabis.

**4.16.010 Special business license and employee permit required.**

No person shall operate or conduct a medical cannabis dispensary unless under and by authority of a valid, unexpired, and unrevoked special business license authorizing such



medical cannabis dispensary issued pursuant to the provisions of EGMC Chapters 4.02 and 4.10 and this chapter, and no person shall be employed by a medical cannabis dispensary without a valid, unexpired, and unrevoked employee permit issued pursuant to the provisions of EGMC Chapters 4.02 and 4.10 and this chapter.

**4.16.015 Notice to community of application for business license.**

At least thirty (30) days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within one thousand (1,000'00") feet of such uses have been notified in writing by mail of the applicant's intent to open such a business.

**4.16.020 Conditional use permit required.**

In addition to the general and special business licensing requirements of this title, each applicant for a special business license for a medical cannabis dispensary shall be required to obtain a conditional use permit from the Elk Grove Planning Commission as provided in the Zoning Code.

**4.16.025 Business hours of dispensaries.**

The City Council finds that it is not in the public interest for a medical cannabis dispensary to operate before or after normal school hours. A medical cannabis dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.

**4.16.030 Prohibited ancillary activities.**

A. No licensee for a medical cannabis dispensary shall allow any of the following ancillary activities to take place on-site:

1. The use of cannabis by any person;
2. The cultivation of cannabis anywhere on the property;
3. The sale and/or display of drug paraphernalia or any implement that may be used to administer medical cannabis. The licensee shall maintain full compliance with Sections 11014.5 and 11364 et seq., of the Health and Safety Code and EGMC 4.54.200 et seq.;
4. Alcohol shall not be provided, stored, kept, located, sold, dispensed or used anywhere on the property.

B. In addition to any other conditions imposed by City staff in the conditional use permit for the medical cannabis dispensary, the foregoing prohibitions in subsection (A) of this section shall also be included in the conditional use permit.

#### **4.16.035 Prompt removal of solid wastes.**

The City Council finds that the conduct of a medical cannabis dispensary generates solid waste in which there is a risk of the presence of cannabis in the waste stream. Every licensee of a medical cannabis dispensary shall provide for removal of all solid waste from the property at least twice each day the dispensary is in operation at times at least three (3) hours apart. No solid waste shall be allowed to remain on-site during the time that the medical cannabis dispensary is not open to the public.

#### **4.16.040 License application.**

In addition to the requirements of EGMC Section 4.10.030 for an application for a special business license, an application for a medical cannabis dispensary shall include all of the following additional certifications and plans, a copy of which shall be maintained by the City:

A. List of Cannabis Suppliers. The applicant shall list the names and addresses of all suppliers of cannabis products;

B. Certification of No Interstate Commerce. The applicant shall certify that cannabis dispensed for medical purposes is produced within the state of California and has not crossed state lines;

C. Safety and Security Plan. The applicant shall submit for approval from the Chief of Police a written safety and security plan for the safe and secure storage and distribution of cannabis, which plan shall include a hard-wired, monitored alarm system;

D. Confidentiality Plan. The applicant shall submit for approval from the Chief of Police a written confidentiality plan for preserving the confidentiality of all qualified patients and primary caregivers to whom medical cannabis is dispensed by the licensee.

#### **4.16.045 Maintenance of certifications and plans.**

A. Copies of Certifications and Plans. During the term of a special business license for a medical cannabis dispensary, the licensee shall maintain on the premises a current copy of the approved list of cannabis suppliers, the certification of no interstate commerce, the safety and security plan, and the confidentiality plan, and they shall be made available for inspection by representatives of the City on demand during business hours.

B. Amendment of Certifications or Plans. At any time during the term of a special business license for a medical cannabis dispensary, should there be a proposed change in suppliers of cannabis or a change in any element of the safety and security or confidentiality plans, the licensee shall file a request with the Chief of Police for an

amendment of the license to allow the new or different cannabis supplier or change in a plan. Upon investigation by the Chief of Police pursuant to EGMC Section 4.10.035, the proposed amendments may be granted or denied by the Chief of Police stating in writing the reasons therefor. The approved amended list of suppliers or plans shall be kept on file with the Chief of Police. Appeal of the denial of any proposed amendment of the license will be pursuant to the same procedure specified for the denial of an initial application or renewal of a special business license pursuant to EGMC Sections 4.10.110 through 4.10.130.

#### **4.16.050 Confidentiality of plans.**

The City Council finds that the public interest served in preserving the confidentiality of a safety and security plan for a medical cannabis dispensary and not disclosing the plan to the general public far outweighs the public's interest in disclosure of such safety and security plan.

The City Council finds that there is an important security public interest served in preserving the confidentiality of a confidentiality plan for a medical cannabis dispensary by not disclosing the plan to the general public that far outweighs the public's interest in disclosure of such confidentiality plan. Further, the City Council finds there is an important privacy interest in not disclosing such confidentiality plans that far outweighs the public's interest in disclosure of such confidentiality plans.

#### **4.16.055 Applications for employee permits.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit, or an application for the renewal of an employee permit, to work in a medical cannabis dispensary shall contain the following:

- A. A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of *nolo contendere*. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
- B. A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control of regulated substances;
- C. A declaration by a medical cannabis dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the medical cannabis dispensary;
- D. A declaration by the medical cannabis dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for

controlled substances (and alcohol for permit renewal) in accordance with Section 53075.5 of the Government Code and the results thereof are negative;

E. The name of the medical cannabis dispensary business which the applicant is employed by or has an offer of employment from;

F. A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;

G. Such other information as may be required by the Chief of Police to further the purposes of this chapter or EGMC Chapter 4.02 or 4.10.

#### **4.16.060 Issuance or renewal of employee permit.**

Upon receipt of an application for an employee permit, or the application for the renewal of an employee permit, the Chief of Police shall conduct an investigation pursuant to EGMC Section 4.10.085. The Chief of Police shall issue the permit or renewal of the permit pursuant to EGMC Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in EGMC Section 4.10.090 or the Chief of Police finds in writing any of the following:

A. That the application fails to contain information required by the Chief of Police or EGMC Section 4.10.030, or is otherwise incomplete;

B. That the applicant fails to submit or refuses to submit to fingerprinting or photographing;

C. That information contained in the application is false or otherwise inaccurate;

D. That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or for which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, there is a substantial risk that the applicant would not work in a medical cannabis dispensary in a law-abiding manner or in a manner which would not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application for a permit or a renewal shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01 et seq., of the California Penal Code, or that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under Section 4852.01 et seq., of the California Penal Code. Conviction of a moving traffic violation shall constitute grounds for denial of the permit or renewal if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the medical marijuana dispensary in a law-abiding manner or in a manner which would not subject members of the public to risk of harm; or

E. One or more of the grounds for permit revocation or suspension exists pursuant to this chapter.

#### **4.16.065 Employee permit void on termination.**

The employee permit shall become void upon termination of employment of the holder of an employee permit by the holder of a special business license. A holder of an employee permit shall return his or her employee permit to the Chief of Police within three (3) days after termination of employment.

The holder of the special business license employing the holder of the employee permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment.

#### **4.16.100 Suspension or revocation.**

Failure to comply with any of the requirements of this chapter or with any condition set forth in the conditional use permit for the property shall be grounds for the suspension or revocation of the license under EGMC Sections 4.10.145 through 4.10.155.

## **Chapter 4.20**

### **CARDROOMS**

Sections:

- 4.20.000 Statement of purpose.
- 4.20.005 Definition – “Cardroom.”
- 4.20.010 Definition – “Gaming” or “gambling.”

- 4.20.015 License required.
- 4.20.020 Qualifications – Use.
- 4.20.025 Number of licenses limited.
- 4.20.030 Employee permits.
- 4.20.035 Application for permits.
- 4.20.040 Issuance of permit.
- 4.20.045 Suspension and revocation of permits.
- 4.20.050 Bond.
- 4.20.055 Responsibility of licensee.
- 4.22.060 Records and audit.
- 4.20.065 Temporary suspension.
- 4.20.070 Temporary suspension – Notice of suspension and appeal.
- 4.20.075 Conducting a cardroom or operating as a cardroom manager or dealer after temporary suspension.
- 4.20.085 Table operation fee.
- 4.20.090 Hours of operation.
- 4.20.095 Games permitted.
- 4.20.100 Equipment – Separation.
- 4.20.105 Minors prohibited.
- 4.20.110 Bets limited – Notice.
- 4.20.115 Notice of table rent.
- 4.20.120 Credit prohibited.
- 4.20.125 Display of licenses and permits.
- 4.20.130 Protection of patrons.
- 4.20.135 Exclusion or ejection from a cardroom.

4.20.140 Conflicts.

**4.20.000 Statement of purpose.**

The regulatory provisions of EGMC Sections 4.20.020 and 4.20.025 are necessary to ensure that card-rooms are operated reasonably for the protection of the public health, safety, and welfare and to conform to state-mandated requirements set by the Gaming Registration Act found in the Business and Professions Code commencing with Section 19800, et seq. Although many operators are highly reputable, others are creative in avoiding the letter of the law. Gaming brings with it the elements of enjoyment and entertainment for its patrons but also undesirable elements such as compulsive gambling, cheating, dishonesty, and other possible criminal violations and peace disturbances.

If all licensees were reputable and vigilant, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to EGMC Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants and their entities in order to assure that licensure will not set the stage for fraud or deceit. Such investigation is particularly difficult when applicants have no local track record. Accordingly, two (2) years' residence or two (2) years' business operation within this City is required before an applicant is eligible to apply for a cardroom license and this requirement is found in EGMC Section 4.20.020. A two (2) year period for the observation of an individual's or business entity's ethical practices or lack thereof is a more realistic period of time for such assessment as opposed to a one (1) year residency requirement.

EGMC Section 4.20.025 would limit the number of cardroom licenses issued to one for each seventy-five thousand (75,000) residents of the City, thus limiting the expansion of gambling within this community to a level where such gambling will be a source of local entertainment and recreation for local citizens while preventing this community and City from becoming a mecca for professional gamblers and gamblers from other jurisdictions. A "casino"-type atmosphere where gambling becomes the major industry or attraction of a community or mecca for gamblers from all jurisdictions is detrimental to the development of this community as such increased and unrestrained gambling creates greater law enforcement problems, compromising the ability of law enforcement to totally control the criminal and peace disturbance effects thereof. Limiting the number of licenses and cardrooms to one for each seventy-five thousand (75,000) residents

assists in the accomplishment of these goals as opposed to permitting a greater number of licenses with a limitless number of cardrooms that may be operated per license.

The two (2) year residency requirement and the restriction in the number of cardroom licenses available would allow City energies to be more efficiently allocated. Preliminary screening would be supplemented with the objective track record of each applicant. The number of cardrooms would remain at a manageable level for the Chief of Police without creating a monopoly for existing cardrooms. The volume of unstable or illegally run cardroom operations would be more effectively curtailed.

Accordingly, the City Council finds that a two (2) year residence or operation prerequisite for a special business license and a limitation of one cardroom per seventy-five thousand (75,000) residents of the City will eliminate many of the above-mentioned problems without undue burden on stable and reputable cardrooms. The purpose therefore of EGMC Sections 4.20.020 and 4.20.025 is to protect the health, safety, and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to provide legitimate cardrooms where citizens of this City can safely enjoy the entertainment provided by reputable cardrooms.

**4.20.005 Definition – “Cardroom.”**

As used in this chapter, the term “cardroom” means any place where gaming is conducted and to which the public is invited to participate.

**4.20.010 Definition – “Gaming” or “gambling.”**

A. As used in this chapter, the term “gaming” or “gambling” means any game of chance played with cards, dice, or any device for currency, money, check, credit, or other thing of value which is not prohibited and made unlawful by Chapter 9 (commencing with Section 319) of the Penal Code or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code or by this chapter.

B. “Gaming” or “gambling,” for purposes of this chapter, does not mean the following:

1. The game of bingo conducted pursuant to and regulated by EGMC Chapters 4.21, 4.22 and 4.23;
2. Any lottery game conducted and regulated by the California State Lottery;
3. Parimutuel wagering on horse races regulated by the California Horse Racing Board;
4. Games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.



#### **4.20.015 License required.**

No person shall operate or conduct a cardroom in the City unless under and by authority of a valid, unexpired, and unrevoked special business license authorizing a cardroom issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

#### **4.20.020 Qualifications – Use.**

A. If the applicant for a special business license to operate a cardroom is a sole proprietor, the proprietor shall have been a resident of the City for at least two (2) years immediately preceding the filing of an application for the license and shall have met the requirements set by the State Department of Justice pursuant to the Gaming Registration Act (commencing with Section 19800 et seq., of the Business and Professions Code) prior to filing the application for the license. If the applicant is a partnership, corporation, or other business entity owned by more than one individual, the business entity shall have engaged in a business within the City continuously for at least two (2) years immediately preceding the filing of the application and shall have met the requirements set by the State Department of Justice pursuant to the Gaming Registration Act (commencing with Section 19800 et seq., of the Business and Professions Code) prior to filing an application for a license.

B. The special business license issued pursuant to this chapter shall be placed in use at the designated location no later than ninety (90) days following the issuance thereof and the special business license shall remain in use thereafter for the term of the license. Failure to place such license in use at the designated location within the ninety (90) day period provided herein, or to maintain the license in use during the term of the license, shall be grounds for revocation of the license by the Chief of Police. For purposes of this subsection, “in use” shall mean that at the location designated in the license the business of a cardroom shall be in operation and that games as provided in EGMC Section 4.20.095 shall be conducted therein.

For purposes of revocation under this subsection, temporary closure of the cardroom for necessary remodeling, rebuilding, repair, improvements, or other necessary and reasonable activity required to operate or improve the operation of the cardroom when such activities are undertaken by the licensee in a good faith effort to complete the activity within a reasonable period of time shall not be grounds for revocation.

The licensee shall cooperate with the Chief of Police by providing him or her the necessary information and documentation upon demand by the Chief of Police in order to allow a determination of whether the licensee comes under the provisions of this subsection requiring revocation of the license. Failure of the licensee to cooperate with the Chief of Police pursuant to the provision of this subsection shall be grounds for the revocation of the special business license to operate the cardroom. The procedure for

notice of revocation, revocation, and appeal of revocation shall be the same as is provided in EGMC Chapter 4.10 for the revocation of special business licenses.

#### **4.20.025 Number of licenses limited.**

A. The number of licenses issued shall be limited to one (1) for each seventy-five thousand (75,000) residents, or fraction thereof, of the City, as determined by the last federal census or as determined by the latest population estimate of the Department of Finance of the state of California.

B. In the event there are more applications for special business licenses to operate cardrooms than the limitation in subsection (A) of this section allows, the qualified applicant or applicants to whom a license is issued shall be selected by the Chief of Police in the order the applications were filed with the City Manager. Once all available number of licenses are issued, no applications will be accepted or considered until such time as an additional license becomes available. When the additional license becomes available, applications will then be taken and will be considered as provided herein upon the timely filing of a new application therefor. For purposes of this subsection, the unrevoked, valid, and unexpired license of a cardroom licensee who has filed a timely application for renewal of the license is not considered an additional license available for issuance until the license renewal application has been denied and the appeal thereof, if any, has become final.

C. Notwithstanding the provisions of EGMC Section 4.10.010, a licensee shall operate no more than one (1) cardroom in the City and shall hold no more than one (1) special business license issued pursuant to this chapter to operate that cardroom; and no more than one (1) cardroom shall be located within a single structure or at a single location.

#### **4.20.030 Employee permits.**

A. No person shall work in a cardroom as a manager or cardroom dealer, and no person who holds a special business license authorizing operation of a cardroom shall employ any person as a cardroom manager or cardroom dealer unless such person possesses a valid employee permit issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

B. Notwithstanding the provisions of EGMC Section 4.10.095, an employee permit as a cardroom manager or cardroom dealer shall authorize the permittee to operate as a cardroom manager or cardroom dealer in any cardroom possessing an unrevoked, unexpired, and valid special business license issued pursuant to this chapter authorizing the operation of such cardroom within the City. Notwithstanding the provisions of EGMC Section 4.10.095, the employee permit shall not include the name

and address of the cardroom for which the employee permit is issued as the employee permit authorizes the permittee to operate within any cardroom as indicated above.

C. Upon demand by the Chief of Police, the cardroom shall provide the Chief of Police with the full names and the residence addresses of persons operating as cardroom managers or cardroom dealers in the cardroom.

#### **4.20.035 Application for permits.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit to serve as a cardroom manager or cardroom dealer shall contain a list of each criminal conviction of the applicant, pleas of guilty, or pleas of *nolo contendere*. The list shall, for each such conviction or plea, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.

#### **4.20.040 Issuance of permit.**

Upon receipt of an application for an employee permit to serve as a cardroom manager or cardroom dealer, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as he or she deems necessary. The Chief of Police shall issue the permit unless he or she finds pursuant to EGMC Section 4.10.090 any of the following:

A. That the application fails to contain information required by the Chief of Police or EGMC Section 4.20.035, or is otherwise incomplete;

B. That information contained in the application is false or otherwise inaccurate;

C. That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would perform his or her duties as a cardroom manager or dealer in an unlawful manner or in a manner which subjects patrons of the cardroom to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01 et seq., of the California Penal Code, or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a

person when considering the denial of a license under Section 4852.05 of the California Penal Code;

D. That the applicant has violated or is in noncompliance with any of the provisions and requirements of this chapter or other applicable law or administrative rule or regulation;

E. That the applicant is disqualified from holding a state gambling license for any of the reasons specified in the Gambling Control Act, Sections 19850 and 19914 of the Business and Professions Code; or

F. That the state of California objects to the issuance of the permit pursuant to the Gambling Control Act, Sections 19850 and 19912 of the Business and Professions Code.

#### **4.20.045 Suspension and revocation of permits.**

A. An employee permit may be revoked or suspended pursuant to EGMC Section 4.10.140 upon any of the following grounds:

1. Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to this chapter, EGMC Chapter 4.02 or 4.10;

2. Misrepresentation of a material fact contained in the application for the permit;

3. The Chief of Police has acquired information supporting a finding prescribed by EGMC Section 4.20.040(C) in relation to the holder of the permit; or

4. The holder of the permit has violated any term, condition or requirement or prohibition established by this chapter which is applicable to the holder of the permit.

B. An employee permit may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal pursuant to EGMC Section 4.10.145, as applicable.

#### **4.20.050 Bond.**

Before issuing a special business license under the provisions of this chapter, the City Council shall require the applicant, as a condition to the issuance of the special business license, to post with the City a cash bond in the sum of Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars or a surety bond in the same amount furnished by a corporate surety authorized to do business in the state payable to the City. The bond shall guarantee that the licensee shall redeem all chips for cash, and the bond shall be kept in full force and effect by the licensee throughout the term of the license.

The provisions of this section shall not be applicable to card games played or held by fraternal and veterans organizations, benefit associations, churches and other nonprofit

organizations operating the games for charitable purposes for participation by their members or bona fide guests.

#### **4.20.055 Responsibility of licensee.**

The holder of a special business license issued pursuant to this chapter and EGMC Chapter 4.10 shall be financially and otherwise responsible for the operation of the cardroom and for the conduct of any manager or other employee connected with the operation of the cardroom. All employees of the cardroom shall be identified by a name tag measuring no smaller than one inch by three (1" x 3") inches and the tag shall be worn in plain view on the upper body of the employee.

#### **4.22.060 Records and audit.**

A. The licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with the operation, conduct, promotion, suspension, and any other phase of the cardroom enterprise and card games which are authorized by this chapter. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police. Upon demand, the Chief of Police or any other authorized representative of the City shall have the right to examine and audit such records at any reasonable time and the license holder shall fully cooperate by making such records available.

B. The records described in subsection (A) of this section shall be subject to disclosure only pursuant to any suspension, revocation, or other proceedings conducted under this chapter, EGMC Chapter 4.02 or 4.10; any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

#### **4.20.065 Temporary suspension.**

The Chief of Police shall have the authority to temporarily suspend the special business license and to order the licensee to immediately cease and desist any further operation of the cardroom pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions of EGMC Chapter 1.11 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license and one of the following occurs:

A. The licensee is operating the cardroom in a manner which is a serious and immediate threat to the health or safety of the public;

B. The licensee is in violation of any of the provisions of this chapter, EGMC Chapter 4.02, 4.06 or 4.10, administrative regulations adopted pursuant to those chapters, the Penal Code of the state of California, or any applicable law, rule or regulation; or

C. The Chief of Police makes a finding pursuant to EGMC Section 4.10.040(A)(3) and that by reason of the crime or act the patrons of the cardroom and the public are subject to the immediate risk of harm or criminal, deceitful or otherwise unethical practices.

**4.20.070 Temporary suspension – Notice of suspension and appeal.**

A. The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as provided in EGMC Section 4.10.145. The procedures for notice, for service of such notice, and for response by the licensee prior to the commencement of the temporary suspension shall be as prescribed in EGMC Section 4.10.145.

B. The appeal by the holder of a special business license of the revocation or suspension of its license pursuant to EGMC Section 4.10.135, whose license has been temporarily suspended, shall be as provided in EGMC Section 4.10.150.

**4.20.075 Conducting a cardroom or operating as a cardroom manager or dealer after temporary suspension.**

It shall be unlawful for the holder of a special business license to operate a cardroom after temporary suspension of the special business license pursuant to EGMC Sections 4.20.065 and 4.20.070, and it shall be unlawful for the holder of a cardroom employee permit to operate as a cardroom manager or dealer in a cardroom after temporary suspension pursuant to EGMC Sections 4.20.045 and 4.10.145 and such violation shall be punishable as a misdemeanor.

**4.20.085 Table operation fee.**

A. In addition to any application or renewal license fees imposed by the City pursuant to EGMC Chapters 4.06 and 4.10 upon the business of a cardroom, such cardroom shall be charged a quarterly table operation fee for each card table operated by the licensee or to be operated by the applicant. The amount of this quarterly fee shall be as prescribed from time to time by resolution of the City Council and shall be based upon the cost to the City of enforcement and administration of this chapter as provided by EGMC Section 4.02.060.

Exempted from this quarterly fee are additional tables used for promotional or tournament play except that pursuant to EGMC Section 4.20.100(A) the total number of regular tables and promotional or tournament tables in use shall not exceed seven (7) tables. Such promotional or tournament play and the use of such additional tables for

such promotions and tournaments shall not exceed four (4) days in any calendar month. The Chief of Police shall be notified seven (7) days in advance of the promotional or tournament events and shall be notified of the duration and dates of such events.

B. The quarterly table operation fee shall be paid quarterly by the applicant or licensee to the City Manager. The first quarterly fee shall be due at the filing of the initial application for a special business license to conduct a cardroom. Thereafter, the quarterly due dates for payment of the quarterly table operation fee shall be on January 1st, April 1st, June 1st, and September 1st; except, if any of these days falls on a Sunday or a City holiday, the quarterly due date for payment shall be the day after such Sunday or City holiday. The quarterly table operation fee shall be delinquent if not received or postmarked on or before the quarterly due date for payment as such quarterly due date is defined above. Prior to the beginning of each quarter, the licensee shall notify the Chief of Police as to the number of tables to be operated for that new quarter and shall pay to the City Manager the table operation fee accordingly. In the event that the licensee reduces the number of tables in operation during a quarter, the City shall not rebate any of the previously paid table operation fee for that quarter. In the event that the licensee desires to increase the number of tables in operation during a quarter, the licensee shall pay to the City Manager the appropriate table operation fee for that entire quarter regardless of when the additional table(s) are added.

C. On the denial by the Chief of Police of an application or a renewal of a special business license to conduct a cardroom, the quarterly table operation fee paid by the applicant or licensee at the time of filing the initial application or the renewal shall be rebated to the applicant or licensee by the City Manager. The rebate shall not be made by the City Manager until the appeal period on the denial has elapsed or, if an appeal is filed, until a final decision upholding the denial has been made and the appeal has become final in the administrative or judicial process, whichever is applicable.

If the applicant's or licensee's appeal of the denial is granted, the applicant or licensee shall owe and pay the appropriate table operation fee to the City Manager prior to the issuance of the special business license.

#### **4.20.090 Hours of operation.**

A. Except as otherwise provided hereinafter in subsection (B) of this section, the licensee may operate a cardroom twenty-four (24) hours a day and seven (7) days a week.

B. Applicants for a cardroom license to operate a cardroom after the effective date of the ordinance codified in this title shall be required to secure a use permit as approved by the appropriate authority in accordance with the requirements of the zoning code of

the City of Elk Grove. Operation of the cardroom shall thereafter be in accordance with the hours set by the use permit.

#### **4.20.095 Games permitted.**

A. The only gambling permitted in a cardroom in the City is draw poker, lowball, panguingue, hold'em, and seven card stud. The permitted games shall be played only in the following manner:

1. "Draw poker" and "lowball" are played with a standard fifty-two (52) card deck, with joker options. Each player is dealt five (5) cards face down, prior to any betting. After receiving their cards, players determine whether to stop playing that hand (fold) or to place their bets. Following the first round of betting, players have the option of keeping their originally dealt cards or discarding nondesired cards and replacing them with a like number of cards drawn from the deck (the "draw"). Following the "draw," there is a second round of betting. The goal in "draw poker" is to garner the betting pool or common pot with the highest ranking poker hand. The goal in "lowball" is to garner the betting pool or common pot with the lowest ranking poker hand. Acceptable variations of "draw poker" include the dealing of seven (7) cards instead of five (5) and the splitting of the pot between the player holding the highest ranking hand and the player holding the lowest ranking hand.

2. "Panguingue" is played with six (6) to twelve (12) decks of cards with the eights, nines, 10s, and jokers removed. Each player is dealt ten (10) cards and the purpose of the game is to meld sets and sequences of cards with certain cards having special values. Each player, in turn, draws either a card from the top of the remaining deck or from the top of an adjacent discard pile. This sequence of play continues until one player goes out with a total meld of eleven (11) cards, including the card just drawn.

3. "Hold'em" is played with one standard deck of cards. Each player is dealt a predetermined number of "hole" cards face down. After the initial deal, there is a round of betting. Then three (3) "community" cards are dealt face up in the center of the table. There is another round of betting. A fourth card is dealt face up in the center of the table. There is a third round of betting. Then a fifth card is dealt face up in the center of the table. There is a final round of betting. Players use any of the five "community" cards and a predetermined minimum number of their "hole" cards to make the best five (5) card poker hand. Acceptable variations of "hold'em" include the low and high/low versions.

4. "Seven card stud" is played with one (1) standard deck of cards. Each player is dealt two (2) cards face down and one (1) card face up. There is a round of betting. Players are dealt one up card followed by a round of betting. Players are again dealt one up card followed by a third round of betting. Those players electing to remain in the game



are dealt another up card followed by a fourth round of betting. Finally, the remaining players are dealt one down card for a total of seven (7) cards – three (3) down and four (4) up. A fifth and final round of betting occurs. Each remaining player selects five (5) of his seven (7) cards to form the best five (5) card hand. Acceptable variations of “seven card stud” include the low and high/low versions.

B. Written rules for each card game offered by a cardroom pursuant to subsection (A) of this section shall be provided to any patron upon request. The licensee shall file with the Chief of Police a written copy of the rules to each card game played in the cardroom. Any deviation or change in the rules of any card game or any new card game from that on file with the Chief of Police shall require the approval of the Chief of Police prior to offering the card game to patrons. The Chief of Police shall review the new card game or any deviation or change in the rules and shall within ninety (90) days approve the game, provided it conforms with the requirements of subsection (A) of this section and this chapter; and, if the game is patented, the licensee shall obtain written permission from the patent owner prior to offering the game to patrons and prior to acquiring the approval of the Chief of Police to conduct the game.

C. Except as provided in subsection (A) of this section, all other gaming (including, but not limited to, gaming played with cards, dice, or any device for money) not otherwise prohibited by the California Penal Code is prohibited. Nothing herein contained in this chapter shall be construed to permit the licensing of any gambling declared illegal by the Penal Code.

#### **4.20.100 Equipment – Separation.**

A. No cardroom shall maintain more than seven (7) card tables. Chairs shall be provided for all card players. No more than twelve (12) players shall be permitted to play at any time at any one table. Authorized games shall not utilize dominoes, tiles, dice, spinning wheels, electronic player-controlled machines or any other device other than the standard decks of playing cards traditionally used for playing such games, poker chips, and the optional dealer shoes.

B. Each licensed cardroom shall be maintained separate and apart from any other room or business operated in the building, but may be connected by a door.

#### **4.20.105 Minors prohibited.**

No person under the age of twenty-one (21) years shall be permitted to frequent a cardroom or to engage in any card game conducted therein.

#### **4.20.110 Bets limited – Notice.**

No player shall be permitted to wager or raise a wager more than Forty and no/100<sup>ths</sup> (\$40.00) Dollars. Other than seated players actively participating in the game, no person shall be permitted to place a wager on any card game, and a player shall only place a wager on his or her own card hand. Back-line betting or side betting is prohibited. No player shall be permitted to bet with cash money, markers, or anything other than poker chips. Notice of all the provisions and restrictions provided in this section shall be posted in a conspicuous place in the cardroom.

#### **4.20.115 Notice of table rent.**

The licensee shall post in a conspicuous place in the cardroom notice of the amount of table rent to be charged for each table and notice of the total number of tables permitted to be in operation during the particular quarter.

#### **4.20.120 Credit prohibited.**

No cardroom shall extend credit to any patron in order for the patron to participate in a card game.

#### **4.20.125 Display of licenses and permits.**

A copy of the special business license applicable to the cardroom premises and the employee permit of any person employed as a manager or dealer shall be posted and exhibited while in force in some conspicuous place on the cardroom premises.

#### **4.20.130 Protection of patrons.**

A. Whenever it appears to the Chief of Police that security personnel are necessary to protect the health and safety of the public, the Chief of Police shall have the authority to require that a cardroom provide uniformed security personnel on the premises and the parking lot used by the cardroom for its patrons and employees. The Chief of Police shall determine the necessity for the requirement for security personnel based on the propensity for peace disturbances or criminal activity in the geographic area in which the cardroom is located, based upon criminal activity or peace disturbances on cardroom premises, based upon the particular time of day, or any other factors which affect the health and safety of the public and cardroom patrons. The Chief of Police shall notify the licensee, in writing, as to time periods, days of the week during which security is required, the number of security officers, and the location where such officers are to be provided (whether in the parking lot or on the premises). Upon receiving the written notice of security requirements, the licensee shall conform to those requirements within forty-eight (48) hours of service thereof and shall maintain those requirements in

full force and effect until such time as the Chief of Police deems they are no longer necessary.

B. Between the hours of 2:00 a.m. and 6:00 a.m., the licensee shall not knowingly permit the consumption of alcoholic beverages on the premises or in the parking lot which the cardroom uses for its patrons.

C. The licensee shall not knowingly permit any obviously intoxicated person to participate in any card game.

D. The licensee shall not knowingly permit any illegal activity to occur on the premises or in the parking lot used by the cardroom for its patrons or employees. Illegal activity includes, but is not limited to, narcotics violations, bookmaking, illegal gambling, loansharking, receiving stolen property, or prostitution.

E. The licensee shall permit the Chief of Police, the City Manager, the Chief of the Cosumnes Community Services District Fire Department or any other authorized public official to inspect the premises at any time during the hours of operation.

#### **4.20.135 Exclusion or ejection from a cardroom.**

A. Pursuant to Section 19845 of the Business and Professions Code, the licensee shall be permitted to exclude or eject from the licensee's cardroom any individual who has engaged in or been convicted of bookmaking, sale of controlled substances, or illegal gambling activities, or whose presence in or about the cardroom would be inimical to the interests of legitimate gaming. The licensee shall not exclude or eject any person on the grounds of any protected class under state law including, but not limited to, race, color, creed or sex. Any individual who is excluded or ejected from any cardroom and who refuses to leave the premises is subject to arrest for trespassing.

B. Pursuant to Section 19844 of the Business and Professions Code, any individual who is excluded or ejected from any cardroom may apply to the Chief of Police for a hearing on the question of whether subsection (A) of this section is applicable. The hearing shall be held within thirty (30) days after filing of the request for hearing with the Chief of Police or at such time as the applicant and Chief of Police may agree. If, upon the hearing, the Chief of Police determines that the rule of exclusion or ejection as provided in subsection (A) of this section does not or should not apply to the applicant, the Chief of Police shall notify all cardrooms licensed by the City pursuant to this chapter of such determination. If the Chief of Police determines that such exclusion or ejection was proper, the Chief of Police shall make an order to that effect which shall be a final administrative order. Such order shall be subject to review by any court of competent jurisdiction in accordance with law.

C. Pursuant to Section 19846 of the Business and Professions Code, notwithstanding any other provision of law, no cardroom which ejects or excludes any individual based upon the provisions of subsection (A) of this section shall be subject to civil liability if such ejection or exclusion was based upon a reasonable and good faith belief that subsection (A) of this section applied to the individual in question.

#### **4.20.140 Conflicts.**

A. If any section, subdivision, clause, phrase or portion of this chapter conflicts with any section, subdivision, clause, phrase or portion of an express provision of the Zoning Code, or conditions of a use permit of the Zoning Code, or other administrative approvals issued under the Zoning code, then the Zoning Code, conditions of the use permit under the Zoning Code, or the administrative approvals issued under the Zoning Code shall prevail.

B. If any section, subdivision, clause, phrase or portion of this chapter conflicts with any section, subdivision, clause, phrase or portion of the Gaming Registration Act (commencing with Section 19800 et seq., of the Business and Professions Code) as required by the state of California, then the Gaming Registration Act shall prevail.

### **Chapter 4.21**

#### **BINGO GAMES**

##### Sections:

- 4.21.000 Statement of purpose.
- 4.21.005 Bingo prohibition.
- 4.21.010 Definition of "bingo."
- 4.21.015 Definition of "bingo game."
- 4.21.017 Definition of a "bingo session."
- 4.21.020 Definition of "security."
- 4.21.025 Definition of "member."
- 4.21.027 Prohibition of member participation in staffing bingo games.
- 4.21.030 Chief of Police.
- 4.21.035 Organizations eligible for license.

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- 4.21.065 Profits – 23701(d) organizations.
- 4.21.070 Proceeds – Other organizations.
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- 4.21.083 Limitation of involvement in bingo.
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- 4.21.105 Licensing of premises.
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- 4.21.160 Injunction.
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- 4.21.170 False or misleading advertising.
- 4.21.175 Receipt of profit by a person and penalty for violation of this chapter.
- 4.21.180 Discontinuance of bingo games.

**4.21.000 Statement of purpose.**

Past enforcement experience in other jurisdictions has demonstrated the following:

A. City time, effort and expense to regulate and monitor bingo are increasing significantly. State and City laws demand a technical accounting of proceeds. As volume increases, the City's ability to audit and enforce state and local law is compromised. Although many operators are highly efficient and reputable, others are inefficient and creative in avoiding the letter of the law.

B. If all licensees were efficient and reputable, regulatory supervision would be almost perfunctory. Such is the case with many existing licensees. Others, however, require exhaustive monitoring and enforcement. Integrity is a difficult commodity to ascertain in advance of licensure. Thorough screening of applicants prior to licensure is desirable. Pursuant to EGMC Sections 4.10.035 and 4.10.040, the Chief of Police conducts a thorough investigation into the background of applicants, and their organizations, in order to assure that licensure would not set the stage for fraud and deceit. Such investigation is particularly difficult when applicants have no local track record.

C. Both newly chartered and out-of-the-jurisdiction charities have proven to be problematic. Several have folded within months of licensure due to financial collapse. While some financial failure may be innocently explained, others are clearly bankrupted by the misappropriation of charitable proceeds. Whether innocent or criminal causes underlie these failures, short-lived charities monopolize an inordinate amount of City expense, which never ripens to benefit any charity.

A one (1) year operational prerequisite would allow City energies to be more efficiently allocated. Prelicensure screening would be supplemented with the objective track record of each applicant. The number of unstable or pretextual organizations would be reduced.

Accordingly, it is the finding of the City Council that a twelve (12) month operational prerequisite would eliminate many of the above problems, without undue burden to stable and reputable charities. The purposes of this chapter are to protect the health, safety and welfare of the citizens within the City, to assure that City expenditure is efficiently allocated, and to safeguard legitimate charitable purposes.

The purpose for allowing an eligible organization to conduct bingo games in the City is to provide that organization an additional source of revenue to further the purpose for which that organization was created. A licensee organization conducting bingo games without generating a profit from those games does not fulfill the purpose for which bingo is permitted.

Organizations with a proven track record demonstrating that the game can produce a certain level of profits for charitable purposes, as opposed to proceeds going largely to overhead expenses of the game, should be allowed to conduct further games on various days of the week.

The purpose of requiring a separate license for separate functions of bingo operations, such as a bingo parlor license, a bingo supplier license, and a license for the actual conduct of the games, is to ensure that each function is conducted by a separate and independent person or entity. Such regulation aids in assuring the integrity of the game and in minimizing the problems of undue influence being used against an organization that is licensed to conduct bingo. Recent history has shown that nonprofit organizations are not beyond exercising undue influence against smaller organizations and channeling some of the monies meant for charitable purposes into the private accounts of dishonest members. Further, requiring separation of functions lessens the opportunity for fraud, collusion, and self-dealing.

The purpose of requiring those organizations licensed to conduct bingo games to pay amounts owed to the bingo parlor before the next day of bingo operation and to pay the bingo supplier within thirty (30) days of the invoice date or ten (10) days of the statement date, whichever occurs later, is a direct effort to preclude the parlor or the supplier from acquiring a financial interest in the games. The existence of a debtor-creditor relationship is inimical to the integrity of the bingo games. In the realm of gaming, and bingo is gaming, debts owed to the parlor or supplier by the organization licensed to conduct bingo can be used by the parlor or supplier to exert undue influence on the conduct of the games, and to increase the overhead expenses charged to these organizations. Organizations indebted to the parlor or supplier are thus placed in a position of sharing profits with the parlor or supplier to the detriment of the charitable purpose.

#### **4.21.005 Bingo prohibition.**

No person shall operate a bingo game in the City without possessing a valid, unrevoked and unexpired special business license issued pursuant to the provisions of this chapter and City regulations adopted pursuant to this chapter, and except in conformance with Section 326.5 of the California Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.21.010 Definition of “bingo.”**

As used in this chapter, “bingo” means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. The game of bingo shall include cards having numbers or symbols that are concealed and preprinted in a manner providing for the distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend as follows: “for sale or use only in a bingo game authorized under California law and pursuant to local ordinance.” Although “cards” colloquially may refer to a cardboard card, it is permissible for a “card” to be a sheet of paper with multiple card faces preprinted on it and is included herein within the definition of “card.”

The game of bingo includes the use of an electronic bingo aid in conjunction with bingo cards to assist a bingo player participating in bingo games to identify a winning card, when used under the conditions set forth in EGMC Section 4.21.167(B). The term “electronic bingo aid” is defined as any mechanical, electronic, or computerized aid (including related hardware and software) that is interfaced with or connected to equipment that allows a player to store, display, and mark bingo card faces programmed into the device. This definition of “electronic bingo aid” includes the individual handheld or tabletop unit or component used by a player, the related equipment and system with which the handheld or tabletop unit is interfaced, and all other related systems, equipment, software, hardware, and circuitry, that together comprise the electronic bingo aid.

Definitions, powers, conditions and restrictions set forth in this chapter are intended to comply with and implement applicable California Constitution and Penal Code provisions. To the extent that any provision of this chapter is substantially the same as that contained in Section 326.5 of the Penal Code, and violation thereof is a violation of that Penal Code section and punishable thereunder, such provision of this chapter is explanatory only.



#### **4.21.015 Definition of “bingo game.”**

A. The total value of prizes awarded during the conduct of any bingo game shall not exceed Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars in cash or kind, or both, for each separate game which is held. A bingo game starts when the first ball or number symbol is called and ends when the first ball and all succeeding balls or number symbols are returned to the cage or blower. Each progressive play in a series which continues to utilize and count any number symbols called and utilized in a previous part of this progression shall be deemed part of the same bingo game, even if a separate prize is awarded for each part of the progression. The cumulative prizes awarded for a “progressive” or other similar bingo game shall not exceed Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars in cash or kind or both.

B. It shall be unlawful for any person to establish, provide or authorize the establishment or provision of a prize or prizes in violation of the provisions of this section, and a violation of the provisions of this section shall constitute grounds for revocation of a special business license authorizing the operation of bingo games issued pursuant to the provisions of this chapter and EGMC Chapter 4.10.

#### **4.21.017 Definition of a “bingo session.”**

A bingo session shall not exceed six (6) hours in duration. A session begins when the first game starts.

#### **4.21.020 Definition of “security.”**

“Security” shall mean the person(s) who protects bingo players, bingo licensees, and volunteers from exposure to danger. The security person(s) shall be prohibited from the sale or the distribution of bingo materials or otherwise participating in nonsecurity activities before, during, and after the bingo session. However, this provision does not preclude security from accompanying the licensee with the session’s net proceeds to a night depository immediately after the session.

#### **4.21.025 Definition of “member.”**

A. Each licensee shall have written policies incorporated in its constitution, articles, bylaws, or other regulations setting forth the manner in which a person may become a bona fide member of the organization. Absent any such written policies, it shall be presumed that the organization has no members who may operate or staff bingo games within the meaning of Section 326.5 of the Penal Code.

B. The licensee shall keep a full and accurate list of its members. The Chief of Police or any other authorized representative of the City is entitled to examine and investigate

such list at any reasonable time, and the licensee shall cooperate in making such records available upon demand of the Chief of Police.

#### **4.21.027 Prohibition of member participation in staffing bingo games.**

A. A volunteer or member shall not participate in the staffing of bingo games if the Chief of Police makes a finding that such volunteer or member:

1. Has violated any applicable prohibition or requirement of this chapter or title or applicable administrative regulations adopted pursuant to this chapter or title, or has been convicted of a crime, and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or
2. Has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or her or another, or substantially injure another; and
3. By reason of the violation, crime, or act, there is a substantial risk the member may perform his or her duties of staffing the bingo game in an unlawful manner or in a manner which subjects patrons of the bingo game to risk of harm or criminal, deceitful or otherwise unethical practices.

B. Notwithstanding the foregoing, a member shall not be prohibited from staffing a bingo game solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01 et seq., of the California Penal Code or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under Section 4852.05 of the California Penal Code.

#### **4.21.030 Chief of Police.**

The Chief of Police is charged with the responsibility of administering the regulations imposed by this chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue special business licenses authorizing bingo games, promulgate and enforce administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

#### **4.21.035 Organizations eligible for license.**

Organizations which are exempted from the payment of the bank and corporation tax by Section 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, mobile home park associations and senior citizens organizations shall be eligible to apply for and receive a special business license to conduct bingo games in the City pursuant to the provisions of the California

Constitution, Section 326.5 of the Penal Code, and the provisions of this chapter only if the proceeds of such games are used for charitable purposes and only if the applicant has owned or leased property or occupied donated property within the City that has been used by the applicant for the performance of the charitable purposes for which the applicant is organized for at least twelve (12) consecutive months immediately preceding the filing of such application. The required consecutive twelve (12) month period need not be as an organization that is exempt from the payment of bank and corporation tax. With the foregoing exceptions, no other person shall be qualified or eligible to receive such a license.

#### **4.21.040 Contents of the application.**

In addition to the matters prescribed by EGMC Section 4.10.030, an application for a special business license to conduct bingo games shall contain the following:

A. The names and signatures of at least two (2) officers, including the presiding officer of the organization who will be primarily responsible for conducting bingo games. In the event of any change in persons holding such offices, the licensee shall, within ten (10) days of change, notify the Chief of Police, in writing, of such change, specifying the name, address, date of birth, and telephone number of such officer(s);

B. A description of the property on which bingo games will be conducted, including the street number, whether owned or leased, applicant's current use of the premises, and the occupancy capacity of the property;

C. A copy of the deed, lease or other written instrument by which the applicant will acquire entitlement to occupy the premises where the bingo games will be conducted, and a description of all uses which the applicant will make of the premises;

D. A statement of the specific charitable purpose(s) for which the applicant is organized;

E. Proposed day(s) of the week and hours for conduct of bingo games;

F. Such proof as may be required by the Chief of Police that the applicant is eligible and qualified to receive a special business license under EGMC Section 4.21.035. If eligibility is based on an exemption from payment of the bank and corporation tax, the application shall be accompanied by a certificate of determination of exemption under the applicable section of the Revenue and Taxation Code, or a letter of good standing from the Exemption Division of the Franchise Tax Board showing such exemption;

G. A statement that the applicant agrees to conduct bingo games in strict accordance with the provisions of Section 326.5 of the Penal Code, this chapter, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk

Grove, federal law, or administrative rule or regulation and agrees that the license may be revoked by the Chief of Police upon violation of any such provisions; and

H. The application shall be signed by the applicant under penalty of perjury.

#### **4.21.045 Bingo manager.**

Concurrently, with the filing of an application, each applicant shall file a statement specifying the name, address, e-mail address, if any, telephone number and birth date of one or more persons who shall manage, supervise and be responsible for the conduct of all bingo games by the applicant. Such person(s) shall be known as the bingo manager(s), shall sign the statement accepting such responsibility and shall be present on the premises at all times during which bingo games are conducted. In the event any other person is designated as the bingo manager by any licensee, the licensee shall within ten (10) days of such designation file a new statement containing all of the data specified in this section.

#### **4.21.050 License fee.**

Each holder of a special business license to conduct bingo games shall, pursuant to the authority conferred by Section 326.5 of the California Penal Code, pay to the Chief of Police a fee prescribed by the City Council, paid upon application for a special business license or the application for renewal thereof. A bingo monitoring fee, prescribed by a resolution of the City Council, for law enforcement and public safety costs incurred by the City that are directly related to bingo activities shall be imposed and shall be collected monthly by the City and such additional fee shall not exceed the actual costs incurred in providing the service.

#### **4.21.055 Issuance of license.**

The Chief of Police shall issue a special business license for bingo games unless one or more of the findings prescribed by EGMC Section 4.10.040 are made, or the Chief of Police makes one or more of the following findings in writing:

A. The bingo games will be a fraud on the public;

B. The bingo games will be conducted at a location or in a manner or the proceeds thereof will be accounted for or expended in a manner which violates, or the applicant has violated, Section 326.5 of the Penal Code, this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

C. The identity of the applicant or proposed method or methods of conducting bingo games are contrary to the provisions of Section 326.5 of the California Penal Code, this

chapter, City regulations adopted under this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

D. The applicant will be maintaining an inadequate system of recordkeeping and accounting relating to the conduct of the games and disposition of the proceeds therefrom;

E. The application does not conform to the requirements, terms, and conditions of this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or

F. The applicant holds a current license under EGMC Chapter 4.22 or 4.23.

#### **4.21.060 Posting of license.**

The special business license shall be conspicuously posted at the location of the bingo games.

#### **4.21.065 Profits – 23701(d) organizations.**

With respect to organizations exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. Such profits shall be expended only for the charitable purposes stated in the application for bingo license or in the articles of incorporation of such organization. These profits shall not be used for the private gain of any individual.

#### **4.21.070 Proceeds – Other organizations.**

A. With respect to organizations licensed under this chapter which are not exempt from payment of the bank and corporation tax by Section 23701(d) of the Revenue and Taxation Code, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. These proceeds shall not be used for the private gain of any individual. The proceeds shall be expended only for the charitable purposes stated in the application for bingo license or in the articles of incorporation of such organization, except as follows:

1. Such proceeds may be used for prizes;

2. A portion of such proceeds, not to exceed twenty (20%) percent of the proceeds before the deduction for prizes, or Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars per month, whichever is less, may be used for rental of property, overhead, the purchase of bingo equipment, administrative expenses, security equipment and security personnel; and

3. Such proceeds may be used to pay license fees.

B. A licensee shall be deemed to violate Section 326.5(k)(2) of the California Penal Code and subsection (A)(2) of this section if expenses during any particular month exceed Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars. If expenses do not exceed Two Thousand and no/100<sup>ths</sup> (\$2,000.00) Dollars per month, the twenty (20%) percent limitation shall be applied annually at the conclusion of each twelve (12) months of operation.

#### **4.21.075 Records – Compliance examination and inspection.**

A. The licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation, conduct, promotion, supervision, and any other phase of bingo games. Such records are to include but are not limited to: ledgers and accounts relating to inventory, proceeds, expenditures, and the distribution of all profits derived from bingo games, and any other records as are necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police, and, when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

B. The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy bingo licensee records as described in subsection (A) of this section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

C. Compliance examinations shall be conducted by the Chief of Police of bingo licensee records described in subsection (A) of this section not less frequently than annually, for each twelve (12) months of each licensee's operation.

D. If the organizational structure of the licensee is such that an umbrella organization disburses bingo proceeds to member organizations, the records described in subsection (A) of this section which are subject to examination, review, audit, inspection, or photocopy shall include both the bingo records of the umbrella organization and its

member organizations. For purposes of this section, an “umbrella organization” is defined as a nonprofit, income tax exempt, charitable organization which is organized for the purpose of providing financial support to other nonprofit, income tax exempt, charitable organizations.

#### **4.21.080 Retention of records.**

The licensee shall keep and preserve the records described in EGMC Section 4.21.075(A) for the following period of time, whichever occurs later:

- A. Three (3) years;
- B. Until completion of a compliance examination; or
- C. Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

#### **4.21.083 Limitation of involvement in bingo.**

The bingo licensee shall not allow another person, sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture or other individual or entity to organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of its bingo game or the promotion thereof.

#### **4.21.085 Prohibition of financial interest in bingo.**

A. No individual, corporation, partnership, or other entity except the bingo licensee shall hold a financial interest in the conduct of any bingo game. A financial interest includes, but is not limited to, situations in which a bingo licensee maintains accounts payable to a parlor licensee for parlor rents and other costs beyond the next day of bingo operation, or maintains accounts payable to a bingo supplier beyond thirty (30) days of the invoice date or ten (10) days of the statement date, whichever occurs later. For purposes of this subsection, “invoice date” is defined as the date of delivery of such supplies and “statement date” is defined as the date within thirty (30) days of the delivery of supplies.

B. A licensee that has not paid its supplier account(s) or parlor account(s) within the period provided in subsection (A) of this section shall not purchase additional supplies from any supplier or rent or incur other costs from any parlor until all accounts are brought into compliance with the required payment periods provided in subsection (A) of this section.

#### **4.21.090 Exclusive operation by licensee.**

Only the bingo licensee shall operate bingo games or participate in the promotion, supervision, or any other phase of the games. Bingo games shall be operated and staffed solely by members of the licensee; except that the licensee may retain or employ an off-duty law enforcement officer or security personnel at such bingo games. Such members shall not receive a profit, wage, salary, or compensation from bingo proceeds or bingo profits for services rendered from any bingo game. The term "compensation" as used in this section includes, but is not limited to, cash, bingo paper, pull tabs, coupons, redeemable vouchers, discounts, or payment-in-kind. Neither the provisions of Sections 326.5(b) and (h) of the Penal Code nor those of this section shall be deemed violated if a bingo licensee reimburses members staffing the games for the actual and necessary costs which they incur in providing services associated with the conduct of the games.

#### **4.21.095 Staff member identification.**

Any person participating in the operation, conduct or staffing of any bingo game shall wear on his or her outside clothing, in plain view, an identification insignia or badge measuring not less than two and one-half inches by three and one-half (2.5" x 3.5") inches in size and specifying the name and title of such person and the name of the licensee organization.

#### **4.21.100 Attendance limited to occupancy capacity.**

A. Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which the game is conducted as determined by the Cosumnes Community Services District Fire Department in accordance with applicable laws and regulations.

B. It is unlawful for a licensee to knowingly authorize or permit and unlawful for any person to reserve seats or space where bingo games are conducted.

#### **4.21.105 Licensing of premises.**

The license issued under this chapter shall authorize the holder thereof to conduct bingo games only on such property the address of which is stated in the application. In the event the described property ceases to be used for the conduct of bingo games by the licensee, the license shall have no further force or effect. The bingo licensee shall file a new application, and such application shall be processed pursuant to the provisions of this chapter, in order for the eligible organization to conduct bingo games at a new location or address.



#### **4.21.110 Operating rules.**

A. Each licensee shall formulate, publish and post in a conspicuous place at the location of the bingo games written rules by which the bingo games are conducted and which recite the prohibitions described below. It is unlawful for a licensee to knowingly authorize, permit, and unlawful for any person to do any of the following:

1. Provide or award total prizes for each separate bingo game which exceeds Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars in cash or kind, or both;
2. Limit attendance or participation in such games to members of the licensee or otherwise deny attendance or participation to any member of the general public who complies with the rules of the game and conducts himself or herself in an orderly and law-abiding manner;
3. Participate in a bingo game, if the participant is under the age of eighteen (18) years old;
4. Participate in a bingo game where alcoholic beverages are consumed in the room where the bingo games are conducted or if the participant is under the influence of alcohol;
5. Participate in bingo games, unless personally present at the location of the games at the time the games are being conducted.

B. In this section "participate" is defined as including, but not limited to, the handling of bingo supplies or receipts during any bingo session.

#### **4.21.115 Location of games.**

A licensee shall conduct bingo games only on property owned or leased by it, or property whose use is donated to the licensee, and which property is used by the licensee for performance of the charitable purposes for which the organization is organized. Nothing in this section shall be construed to require that the property be owned or leased exclusively by or donated exclusively to such organization. The requirements of the provisions of Section 326.5(f) of the Penal Code and those of this section shall be deemed satisfied if the licensee conducts regular business meetings or other activities consistent with its charitable purposes, in addition to bingo games, upon the property which it owns, leases, or uses as a donee. A licensee need not use the property exclusively for activities which fulfill its charitable purposes or objectives.

#### **4.21.120 Limitation of bingo hours and sessions.**

A. No bingo licensee shall conduct bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

B. Except as provided in this subsection, no bingo licensee shall conduct more than one (1) bingo session per week. To conduct more than one (1) bingo session per week, a licensee shall secure the permission of the Chief of Police. The licensee shall have a valid, unrevoked, and unexpired license to conduct such bingo games and shall submit a written application with information therein as required by the Chief of Police. The Chief of Police shall authorize the bingo licensee to conduct more than one (1) session per week unless the Chief of Police makes one or more of the following findings in writing:

1. The bingo licensee is not an organization exempt from the payment of the bank and corporation tax as provided by Sections 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), and 237011 of the Revenue and Taxation Code, or is not a mobile home park association, or a senior citizens organization; and, for at least two (2) continuous years immediately preceding filing of the application for additional sessions, has not existed and operated within the City. The two (2) year consecutive period of existence and operation provided for herein need not include exemption from payment of the bank and corporation tax;

2. The bingo licensee has failed, during the immediately preceding two (2) year period, to raise at least Twenty-Five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars each year through public and private solicitations (including publicly funded grants and recreational and other fund-raising activities, but exclusive of any revenue from the sponsorship of bingo games), and has failed to expend at least Sixteen Thousand and no/100<sup>ths</sup> (\$16,000.00) Dollars during each of the preceding two (2) years on charitable causes; or, the bingo licensee has not conducted bingo games in the City for the preceding twelve (12) months;

3. The bingo licensee has failed to equal or exceed, and has failed to maintain for at least six (6) consecutive months, at least seventy-five (75%) percent of the average percentage net profit available from bingo in the City as determined and defined by the Chief of Police from, but not limited to, bingo records of the licensee community during the previous City fiscal year;

4. The bingo licensee does not have enough volunteers to staff the extra sessions;

5. The bingo licensee's accounting records have never undergone a compliance examination by the Chief of Police or there exist uncorrected deficiencies from a compliance examination conducted by the Chief of Police;

6. The additional sessions will be detrimental to public safety, health or welfare; or

7. The licensee has failed to comply with other provisions of this chapter, the City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any

other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

C. The Chief of Police shall notify the bingo licensee in writing of the denial of a licensee's application to conduct more than one (1) bingo session per week and shall in such notice state the reason(s) for the denial and that the licensee has fifteen (15) days from the date of service of such written notice of denial to file an appeal of such denial. Upon timely request by the licensee, the appeal hearing process and related procedures shall proceed pursuant to the provisions of EGMC Sections 4.10.115 through 4.10.130.

#### **4.21.125 Location restriction.**

A. Notwithstanding the permission contained in a special business license pursuant to EGMC Section 4.21.105, and notwithstanding any provision of this chapter or EGMC Chapter 4.10 to the contrary, it shall be unlawful for any person who holds a special business license authorizing the operation of bingo games to conduct bingo games at a place which is or would by virtue of the conduct of such games be or become a bingo parlor, as defined by EGMC Section 4.22.010, unless the bingo parlor has been authorized by a valid unexpired, unrevoked special business license issued pursuant to the provisions of EGMC Section 4.22.030 and EGMC Chapter 4.22.

B. Notwithstanding any other provision of this chapter or EGMC Chapter 4.10 to the contrary, violation of the provisions of subsection (A) of this section shall constitute grounds for revocation of a special business license authorizing the operation of bingo games issued pursuant to the provisions of this chapter and EGMC Chapter 4.10.

#### **4.21.130 Temporary suspension of license pending opportunity for hearing.**

The Chief of Police shall have the authority to temporarily suspend the bingo license by ordering in writing that the licensee immediately cease and desist any further operations of any bingo game pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of EGMC Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

A. The bingo licensee is conducting a bingo game in violation of any of the provisions of this chapter, Section 326.5 of the Penal Code, the City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

B. The bingo licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police, all records necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or

C. The bingo licensee has not kept records as required by the Chief of Police, this chapter, Section 326.5 of the Penal Code, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove or federal law, administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.21.135 Notice of temporary suspension and appeal – Appeal of underlying suspension or revocation.**

A. The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in EGMC Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in EGMC Section 4.10.145.

B. Upon timely request by the licensee, the appeal hearing process and related procedures of a revocation or suspension of its license pursuant to EGMC Section 4.10.135 shall proceed pursuant to the provisions of EGMC Sections 4.10.115 through 4.10.155.

**4.21.140 Conducting bingo games after temporary suspension or suspension.**

Any person who continues to conduct a bingo game after temporary suspension pursuant to EGMC Section 4.21.130, or suspension pursuant to EGMC Section 4.10.135, is guilty of a misdemeanor.

**4.21.150 Receiving bingo proceeds during suspension or revocation.**

Notwithstanding the provisions of EGMC Section 4.10.145, an organization whose license has been temporarily suspended, suspended, or revoked cannot receive bingo proceeds from any source during the period of temporary suspension, suspension, or

revocation. A violation of this section shall result in a permanent license revocation to the organization involved.

#### **4.21.155 Purchases from bingo suppliers.**

It is prohibited for bingo licensees to use bingo paper and pull tabs purchased from suppliers that are not licensed to conduct a bingo supply business by the City pursuant to EGMC Chapter 4.23.

#### **4.21.160 Injunction.**

The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the Penal Code, of this chapter, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.21.165 Regulation of games and equipment.**

The Chief of Police may prescribe such regulations with respect to the conduct of the games and the equipment used by the licensee as deemed necessary to ensure the fairness and integrity of the games, and the accountability of the funds collected. Violation of such regulations shall constitute grounds for revocation of the special business license, as set forth in this chapter and EGMC Chapter 4.10.

#### **4.21.167 Computerized equipment.**

A. Except as provided in subsection (B) of this section, it shall be unlawful for organizations licensed under this chapter to:

1. Permit the use of machines, devices, or equipment that is computerized, electronic, or mechanical, in a bingo game;
2. Operate, or allow to be played, any form of bingo in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

#### **B. Electronic Bingo Aid.**

1. Purpose. The purpose of this subsection (B) of this section is not to permit the use of all electronic bingo aids in bingo. The purpose is to permit the bingo licensee to use an electronic bingo aid on the conditions and specifications set forth in this subsection (B) of this section. It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organization licensed to conduct bingo for a player's operation. These individual player units or components are handheld or desktop devices used in

conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by the bingo licensee in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player in identifying a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in this chapter or Section 326.5 of the Penal Code.

2. An electronic bingo aid may be used by bingo players in conjunction with bingo cards to assist in the identification of a winning card if the bingo licensee complies with the conditions set forth in this section, and if the organization complies with all other required provisions of this chapter and Section 326.5 of the Penal Code. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the special business license to conduct bingo games, pursuant to the procedures set forth in this chapter and EGMC Chapters 4.02 and 4.10.

3. An electronic bingo aid is permitted only as a means of assisting a player to mark, otherwise register, or record numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter the bingo cards. An electronic bingo aid shall not interfere or interact with the element of chance in the game. The player shall have in his or her possession at all times during the game bingo cards with configurations that were sold to the player by the bingo licensee for use with the electronic bingo aid that correspond exactly to such bingo card configurations programmed into the electronic bingo aid. The bingo cards and the individual unit or component of the electronic bingo aid used by the player shall be kept separate and apart and in public view on the tabletop during the game.

4. Players shall manually input numbers called by the bingo licensee into the individual player-operated units or components of the electronic bingo aid, and automatic daubing shall not be permitted. The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee, and the individual player-operated units or components of the electronic bingo aid used by a player, shall be able to identify a winning card during the game. Verification by the bingo licensee of a winning combination shall be made based on the bingo card and not solely on the electronic bingo aid. Players shall notify the game operator or caller of a winning pattern of bingo.

5. The electronic bingo aid, including the individual player-operated units or components of the electronic bingo aid, shall be enabled for play solely by the bingo licensee, and

only on the premises where the games are conducted. The electronic bingo aid shall be programmed either by the bingo licensee or by a bingo supplier licensed pursuant to EGMC Chapter 4.23 at the direction and as specified by the bingo licensee. A copy of any change in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The same card configurations shall be programmed into the electronic bingo aid as are sold to the player. All individual player-operated units or components of the electronic bingo aid shall be rented or otherwise provided to a player solely by the bingo licensee.

6. Prior to giving physical possession of the individual player-operated unit or component of the electronic bingo aid to the player, the bingo licensee shall receive payment from the player for the number of games requested by the player that are programmed into the electronic bingo aid. The bingo licensee shall at the time of payment issue to the player: an individual player-operated unit or component of the electronic bingo aid; the bingo cards sold to the player corresponding exactly to the bingo number pattern for each card face thereon that is programmed into the electronic bingo aid; and a receipt indicating the amount paid, the number of faces and games sold to the player and activated in the electronic bingo aid, and the serial number of each card face sold to the player and activated by the game.

7. The Chief of Police shall by administrative regulation determine the maximum number of bingo card faces that may be programmed into a player-operated unit or component of an electronic bingo aid during a bingo game, but such number shall in no event exceed seventy-two (72) bingo card faces.

8. Only one player-operated unit or component of an electronic bingo aid may be used by a bingo player during a bingo game.

9. A particular type of electronic bingo aid shall not be used by a bingo licensee until the bingo licensee has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected and approved by the Chief of Police.

10. Each player electing to use the electronic bingo aid shall have an equal opportunity to do so. The bingo licensee shall distribute each player-operated unit or component of the electronic bingo aid for play on a random basis; first come, first served. No particular player-operated unit or component of the electronic bingo aid shall be reserved for any player. The bingo player is prohibited from selecting the player-operated unit or component of the electronic bingo aid.

11. Only a bingo supplier licensed by EGMC Chapter 4.23 may remove the electronic bingo aid from the premises where the games are conducted. Removal may be for repair or for use by another organization licensed by this chapter to conduct bingo. A record shall be maintained by the bingo licensee of: all electronic bingo aids removed

from such premises; the name of the person and business, if any, who has taken the device from such premises; the site address where taken; the return date, if any; and disposition of the electronic bingo aid.

12. Accounting records pertaining to electronic bingo aids, including the internal accounting system of the electronic bingo aid, shall be retained as prescribed by EGMC Section 4.21.080. The electronic bingo aid system must have a dial-up capability so the Chief of Police may remotely monitor the operation and the internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for the bingo session. The electronic bingo aid shall at a minimum contain and keep an accounting system that records the serial number of each bingo card or bingo face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. The accounting information must be secure and shall not be accessible for alteration. The electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

13. The bingo licensee shall not conduct bingo games where a player is required to use an electronic bingo aid. During all games, the use of an electronic bingo aid shall be at the option of the bingo player. The bingo licensee shall permit all players to play in all bingo games without the use of an electronic bingo aid.

14. The bingo licensee shall require a player electing to use an electronic bingo aid to purchase no less than the licensee's minimum number buy-in of bingo cards for use without an electronic bingo aid.

15. The portion of the electronic bingo aid system in the immediate physical possession and operation of the bingo licensee shall have the capability during the game to print and may print the configurations of the bingo cards that are programmed into the electronic bingo aid. The player-operated units or components of the electronic bingo aid shall not have such capability and shall not print configurations of the bingo cards.

16. The electronic bingo aid, including related circuitry, shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations to the data within such electronic bingo aid.

17. The Chief of Police may, upon demand, examine and inspect the electronic bingo aid, or any player-operated unit or component of the electronic bingo aid, during the conduct of the games if the Chief of Police detects or discovers any problem with such equipment that affects the integrity of the bingo game or such equipment. The bingo licensee shall immediately cooperate and comply upon the Chief of Police's demand for such examination and inspection. Such examination and inspection shall include immediate access to the electronic bingo aid, player-operated units or components of



the electronic bingo aid, and inspection of all associated parts and systems, as applicable, and may involve the immediate removal of the electronic bingo aid, player-operated units or components of the electronic bingo aid, or related system or parts, as applicable, from the game premises for further testing.

18. If, at any time, the Chief of Police detects or discovers any malfunction with an electronic bingo aid, or any player-operated unit or component of the electronic bingo aid, that affects the integrity of such equipment or the bingo game, the Chief of Police may order the bingo licensee to cease the use of the electronic bingo aid or a player-operated unit or component of the electronic bingo aid, as applicable, immediately. The bingo licensee shall comply immediately with such Chief of Police's order.

19. If the bingo licensee detects or discovers any malfunction or any problem or occurrence with the electronic bingo aid, or the player-operated unit or component of the electronic bingo aid, that affects the security or the integrity of the bingo game or such equipment, the bingo licensee shall cease immediately the use of the electronic bingo aid or affected player-operated unit or component of the electronic bingo aid, as applicable.

#### **4.21.170 False or misleading advertising.**

It shall be unlawful for any licensee to make or disseminate or cause to be made or disseminated before the public in this City, in any newspaper or other publication, or any advertising device, or any other manner or means whatsoever, any statement concerning any such bingo game, including, but not limited to, the amount of prizes to be awarded or distributed in any game, which is untrue or misleading, and which is known or which, by the exercise of reasonable care, should be known to be untrue or misleading.

#### **4.21.175 Receipt of profit by a person and penalty for violation of this chapter.**

A. It is a misdemeanor under Section 326.5(b) of the Penal Code of the state of California for any person to receive or pay a profit, wage, or salary from any bingo game authorized under this chapter for activities related to bingo or the bingo operation. The expenditure of any revenues or proceeds derived from bingo to pay employees, members, or contractors of licensed organizations for services associated with the planning, organization, management, operation or staffing of bingo games, or related to bookkeeping, accounting, auditing or technical advice concerning the handling or disposition of such revenues or proceeds is prohibited. A violation of this prohibition is punishable by a fine not to exceed Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars payable to the General Fund of the City of Elk Grove.

B. In addition to other applicable provisions of this title, a violation of any of the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation, shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a special business license to conduct bingo games issued pursuant to the provisions of this chapter and EGMC Chapter 4.10.

#### **4.21.180 Discontinuance of bingo games.**

Bingo licensees who discontinue conducting bingo games shall follow the accounting requirements prescribed by the Chief of Police in the City regulations adopted pursuant to this chapter. Their failure to do so shall result in denial of a subsequent license to conduct bingo games for two (2) years from the last day a bingo game was conducted.

### **Chapter 4.22**

#### **BINGO PARLORS**

Sections:

- 4.22.000 Purpose.
- 4.22.005 Definitions – Generally.
- 4.22.010 Definitions – “Bingo parlor.”
- 4.22.015 Definitions – “Bingo.”
- 4.22.017 Definitions – “Bingo session.”
- 4.22.020 License required.
- 4.22.025 Contents of the application.
- 4.22.030 Issuance.
- 4.22.035 Employee permits.
- 4.22.040 Application for permits.
- 4.22.045 Issuance of permit.
- 4.22.050 Suspension or revocation of permits.
- 4.22.055 Records – Compliance examination and inspection.
- 4.22.057 Retention of records.

- 4.22.060 Hours of operation.
- 4.22.065 Limitation on parlor owner involvement in bingo.
- 4.22.070 Prohibition of financial interest in bingo.
- 4.22.080 Temporary suspension of license pending opportunity for hearing.
- 4.22.085 Notice of temporary suspension and appeal – Appeal of underlying suspension or revocation.
- 4.22.090 Operating and conducting business at the bingo parlor after temporary suspension or suspension.
- 4.22.100 Receipt of profit by a person and penalty for violation of this chapter.

#### **4.22.000 Purpose.**

In recent years, there has been a proliferation of bingo parlors in the region, resulting in multiple organizations licensed to conduct bingo in accordance with EGMC Chapter 4.21 and conducting bingo games at a single commercial location. Competition for the bingo player and the bingo dollar has increased between charitable organizations conducting bingo games. High rents and overhead and increased promotional expenditures have reduced the charitable organizations' profits derived from bingo games, thereby resulting in a substantial decrease in the profits available for charitable purposes.

The regulatory provisions of this chapter are necessary to ensure that bingo parlors are operated subject to reasonable conditions for the protection of the public health, safety and welfare. A system of regulating bingo parlors, in conjunction with the existing regulations of organizations licensed to conduct bingo in accordance with EGMC Chapter 4.21, encourages the maximum use of bingo proceeds and profits for charitable purposes, but also limits the commercialization of bingo, particularly by criminal or otherwise undesirable elements.

The licensing regulations for bingo parlors further clarify and define the relationship between the bingo parlor and the licensed charitable organizations with respect to the operation and management of bingo games in the City.

#### **4.22.005 Definitions – Generally.**

As used in this chapter, the terms identified by EGMC Sections 4.22.010 through 4.22.017 shall be ascribed the meanings indicated.

#### **4.22.010 Definitions – “Bingo parlor.”**

A “bingo parlor” means a building, facility, or other improvement upon which space is leased, rented or otherwise allocated for monetary consideration to two (2) or more organizations possessing a special business license pursuant to EGMC Chapter 4.21, within or upon which bingo games sponsored by the licensed organizations are conducted. A bingo parlor shall not be deemed to mean or include a building, facility, or other improvement which is owned by a public agency, within or upon which space is rented, leased or otherwise allocated for the operation of bingo games by two (2) or more licensed organizations.

#### **4.22.015 Definitions – “Bingo.”**

As used in this chapter, the term “bingo” shall be deemed to mean a game of chance as specifically defined in EGMC Section 4.21.010.

#### **4.22.017 Definitions – “Bingo session.”**

As used in this chapter, the term “bingo session” shall be deemed to mean the same as specifically defined in EGMC Section 4.21.017.

#### **4.22.020 License required.**

No person shall, unless under and by authority of a valid, unrevoked and unexpired special business license issued pursuant to the provisions of this chapter, operate a bingo parlor in the City, whether singularly or in connection with another type of enterprise. A person shall be deemed to operate or conduct a bingo parlor and violate this section if the person, without a special business license, supervises, directs, organizes, controls or is in any way responsible for or in charge of a bingo parlor for which a special business license is required.

#### **4.22.025 Contents of the application.**

In addition to the matters prescribed by EGMC Section 4.10.030, an application for a special business license to operate a bingo parlor shall contain the following:

- A. A copy of all leases, contracts or other agreements regarding the use or occupancy of the bingo parlor by and between the licensee and any organization licensed to conduct bingo games pursuant to EGMC Chapter 4.21;
- B. A description of all uses which any organization licensed pursuant to EGMC Chapter 4.21 shall make of the bingo parlor premises; and

C. A detailed description of the facility, services, resources and security personnel which the licensee shall provide to each organization licensed pursuant to EGMC Chapter 4.21 which shall operate or conduct a bingo game at the bingo parlor.

#### **4.22.030 Issuance.**

The Chief of Police shall issue a special business license unless:

- A. One or more of the findings set forth in EGMC Section 4.10.040 is made;
- B. The bingo parlor has violated, or will be conducted, operated or managed in a manner which violates, Section 326.5 of the Penal Code, this chapter, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or
- C. The applicant holds a current license under EGMC Chapter 4.21 or 4.23.

#### **4.22.035 Employee permits.**

No person shall work in a bingo parlor as a bingo parlor manager and no person who holds a special business license authorizing operation of a bingo parlor shall employ any person as a bingo parlor manager unless such person possesses a valid employee permit or a special business license issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

#### **4.22.040 Application for permits.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit to serve as a bingo parlor manager shall contain a list of each arrest resulting in either a conviction, a plea of guilty or a plea of *nolo contendere*. This list shall, for each such conviction, plea of guilty or plea of *nolo contendere*, set forth the date of arrest, the offense charged and the offense for which the applicant was convicted, or entered a plea of guilty or plea of *nolo contendere*.

#### **4.22.045 Issuance of permit.**

Upon receipt of an application for an employee permit to serve as a bingo parlor manager, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit pursuant to EGMC Section 4.10.090 unless he or she finds any of the following:

- A. That the application fails to contain information required by the Chief of Police or EGMC Section 4.22.040, or is otherwise incomplete;
- B. That information contained in the application is false or otherwise inaccurate;

C. That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code, or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another, and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant may not perform his or her duties as a bingo parlor manager in a law-abiding manner or in a manner which does not subject patrons of the bingo parlor to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01 et seq., of the California Penal Code or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under Section 4852.05 of the California Penal Code; or

D. That the applicant has violated or is in noncompliance with any of the provisions of this chapter, Section 326.5 of the Penal Code, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.22.050 Suspension or revocation of permits.**

An employee permit may be revoked or suspended pursuant to EGMC Section 4.10.140 upon any of the following grounds:

A. Violation of any of the duties, terms, conditions, requirements or prohibitions contained in this chapter, in the City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

B. Violation of any duties, terms, conditions, requirements or prohibitions imposed by EGMC Chapter 4.02 or 4.10;

C. Misrepresentation of a material fact contained in the application for the permit; or

D. The Chief of Police has acquired information supporting a finding as described by EGMC Section 4.22.045(C) in relation to the holder of the permit.

#### **4.22.055 Records – Compliance examination and inspection.**

A. The parlor licensee shall keep full and accurate records of the income received and expenses disbursed in connection with its operation and conduct of a bingo parlor, and as necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

B. The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy parlor licensee records as described in subsection (A) of this section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

C. Compliance examinations shall be conducted by the Chief of Police of parlor licensee records described in subsection (A) of this section not less frequently than annually, for each twelve (12) months of each licensee's operation.

D. Records described in subsection (A) of this section shall be subject to disclosure only pursuant to:

1. Any suspension, revocation or other proceeding conducted under this chapter or the City regulations adopted pursuant to this chapter; or
2. Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

#### **4.22.057 Retention of records.**

The parlor licensee shall keep and preserve the records described in EGMC Section 4.22.055(A) for the following period of time, whichever occurs later:

- A. Three (3) years;
- B. Until completion of a compliance examination; or

C. Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

**4.22.060 Hours of operation.**

It shall be unlawful for any bingo parlor to operate or remain open for purposes of conducting bingo games between the hours of 2:00 a.m. and 10:00 a.m. of the same day.

**4.22.065 Limitation on parlor owner involvement in bingo.**

The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted at the bingo parlor or the promotion thereof.

**4.22.070 Prohibition of financial interest in bingo.**

With the exception of revenue generated by any business or enterprise for which a special business license is required pursuant to this chapter, no licensee shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited to, the following situations:

A. Rent or other costs for the bingo parlor is adjusted based on the profits, losses or tax exempt status of any organization licensed under EGMC Chapter 4.21;

B. The licensee absorbs, assumes, shares or otherwise participates in the losses or profits of any bingo game conducted by any organization licensed under EGMC Chapter 4.21; or

C. The licensee maintains an accounts receivable for an organization licensed under EGMC Chapter 4.21 for rent amounts or other costs owed to the bingo parlor, except for amounts owed by such organization from a previous day of bingo operation which are paid before the next day of bingo operation.

**4.22.080 Temporary suspension of license pending opportunity for hearing.**

The Chief of Police shall have the authority to temporarily suspend the parlor's license by ordering in writing that the licensee immediately cease and desist any further operations of the parlor pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of EGMC Section 4.10.145 if



the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

A. The parlor licensee is conducting its operation in violation of any of the provisions of this chapter, Section 326.5 of the Penal Code, the City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

B. The parlor licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police, all records necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or

C. The parlor licensee has not kept records as prescribed by the Chief of Police, this chapter, Section 326.5 of the Penal Code, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.22.085 Notice of temporary suspension and appeal – Appeal of underlying suspension or revocation.**

A. The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in EGMC Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in EGMC Section 4.10.145.

B. Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to EGMC Section 4.10.135 shall proceed pursuant to the provisions of EGMC Sections 4.10.115 through 4.10.155.

**4.22.090 Operating and conducting business at the bingo parlor after temporary suspension or suspension.**

Any person(s) who continues to operate and conduct the business of a bingo parlor after temporary suspension pursuant to EGMC Section 4.22.080, or suspension pursuant to EGMC Section 4.10.135, is guilty of a misdemeanor.

**4.22.100 Receipt of profit by a person and penalty for violation of this chapter.**

A. It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this chapter. Payment received by a parlor licensee for rent or lease of a parlor facility or other costs of the parlor related to bingo from a bingo licensee licensed pursuant to EGMC Chapters 4.10 and 4.21 shall not be deemed a violation of this section. A violation of this prohibition is punishable by a fine not to exceed Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars payable to the General Fund of the City of Elk Grove.

B. A violation of any of the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a special business license to conduct a bingo parlor issued pursuant to the provisions of this chapter.

**Chapter 4.23**

**BINGO SUPPLIERS**

Sections:

- 4.23.000 Purpose.
- 4.23.010 Definitions – Generally.
- 4.23.015 Definitions – “Bingo supplier.”
- 4.23.020 Definitions – “Bingo.”
- 4.23.025 License required.
- 4.23.030 Issuance.
- 4.23.035 Records – Compliance examination and inspection.

- 4.23.037 Retention of records.
- 4.23.040 Limitation on involvement in bingo.
- 4.23.045 Prohibition of financial interest in bingo.
- 4.23.050 Required records.
- 4.23.055 Computerized equipment.
- 4.23.060 Temporary suspension of license pending opportunity for hearing.
- 4.23.065 Notice of temporary suspension and appeal – Appeal of underlying suspension and revocation.
- 4.23.075 Operating and conducting business after temporary suspension or suspension.
- 4.23.080 Receipt of profit by a person and penalty for violation of this chapter.

**4.23.000 Purpose.**

A system of regulating bingo suppliers in conjunction with the regulation of organizations authorized to conduct bingo games pursuant to Section 326.5 of the Penal Code and of bingo parlors is necessary to ensure the maximum use of bingo proceeds and profits for charitable purposes and to limit the abuses stemming from increased commercialization of bingo in the City.

**4.23.010 Definitions – Generally.**

As used in this chapter, the terms identified by EGMC Sections 4.23.015 and 4.23.020 shall be ascribed the meanings indicated.

**4.23.015 Definitions – “Bingo supplier.”**

A “bingo supplier” means any person or enterprise which, for a consideration, sells, rents, supplies, provides or furnishes equipment, products, goods, paper or other items for use in the conduct of bingo games.

**4.23.020 Definitions – “Bingo.”**

As used in this chapter, the term “bingo” shall be deemed to mean a game of chance as specifically defined in EGMC Section 4.21.010.

#### **4.23.025 License required.**

No person shall, unless under and by authority of a valid, unrevoked and unexpired special business license, sell, rent, supply, provide or furnish for a consideration any equipment, products, goods, paper or other items for use in the conduct of bingo games. A bingo supplier shall be deemed to operate or conduct business within the City if the bingo supplier or representatives thereof sell, rent, supply, provide or furnish for a consideration, within the City, any equipment, products, goods, paper or other items for use in the conduct of bingo games, whether or not the bingo supplier operates from a fixed location within another jurisdiction.

#### **4.23.030 Issuance.**

The Chief of Police shall issue a special business license unless:

- A. One or more of the findings set forth in EGMC Section 4.10.040 is made;
- B. The bingo supplier sells, rents, supplies, provides or furnishes any equipment, products, goods, paper or other items for use in conjunction with or in the conduct of bingo games in a manner which violates Section 326.5 of the Penal Code, this chapter, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;
- C. The applicant has a current license under EGMC Chapters 4.21 or 4.22; or
- D. The applicant has violated or is not in compliance with this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

#### **4.23.035 Records – Compliance examination and inspection.**

A. The bingo supplier licensee shall keep full and accurate records of all inventory, income received and expenses disbursed in connection with the sale, rental, supply, provision or furnishing of any equipment, products, goods, paper or other items for use in the conduct of bingo games, and as necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or rule or administrative regulation. The records shall be of such types and maintained in such manner as may be prescribed by the Chief of Police; and when not so prescribed, shall be of such types and maintained according to the requirements of generally accepted principles of accounting.

B. The Chief of Police or any other authorized representative of the City shall have the right to inspect, conduct a compliance examination, review, audit, or photocopy supplier

licensee records as described in subsection (A) of this section at any reasonable time and the license holder shall fully cooperate by making such records and photocopies thereof available to the Chief of Police upon demand. The licensee shall deliver the records for the purpose of a compliance examination, review, audit, inspection, or for photocopy to the office of the Chief of Police during reasonable hours upon demand of the Chief of Police.

C. Compliance examinations shall be conducted by the Chief of Police of supplier licensee records described in subsection (A) of this section not less frequently than annually, for each twelve (12) months of each licensee's operation.

D. Such records shall be subject to disclosure only pursuant to:

1. Any suspension, revocation or other proceeding conducted under this chapter or the City regulations adopted pursuant to this chapter; or
2. Any civil or criminal investigation conducted by the Chief of Police, the District Attorney, the Grand Jury or the City Attorney. For all other purposes, the records shall be kept confidential by the Chief of Police, as custodian of those records.

#### **4.23.037 Retention of records.**

The supplier licensee shall keep and preserve the records described in EGMC Section 4.23.035(A) for the following period of time, whichever occurs later:

- A. Three (3) years;
- B. Until completion of a compliance examination; or
- C. Until the administrative or judicial appeal process, whichever is applicable, is final, if the license has been suspended, revoked, or a renewal denied.

#### **4.23.040 Limitation on involvement in bingo.**

The licensee shall not organize, manage, supervise, conduct, control or otherwise participate in or influence either the operation of any bingo game conducted in the City or the promotion thereof.

#### **4.23.045 Prohibition of financial interest in bingo.**

A. With the exception of revenue generated by any business or enterprise for which a special business license is required pursuant to this chapter, no bingo supplier shall have a financial interest in the conduct of a bingo game operated in the City. A licensee shall be deemed to have a financial interest in the conduct of a bingo game including, but not limited, to the following situations:

1. The price or cost of bingo supplies is adjusted by the licensee based on the profits, losses or tax exempt status of any organization licensed under EGMC Chapter 4.21;

2. The licensee absorbs, assumes, shares or otherwise participates in the losses or profits of any bingo game conducted by any organization licensed under EGMC Chapter 4.21; or

3. The licensee maintains an accounts receivable for an organization licensed to conduct bingo games pursuant to EGMC Chapter 4.21 for amounts owed to the bingo supplier for a period that exceeds thirty (30) days from the invoice date or ten (10) days from the statement date, whichever occurs later. For purposes of this subsection, "invoice date" is defined as the date of delivery of such supplies and "statement date" is defined as the date within thirty (30) days of the delivery of supplies.

B. The licensee, with knowledge that a bingo licensee licensed pursuant to EGMC Chapter 4.21 has not paid its supplier account(s) to any supplier within the required period as provided in subsection (A)(3) of this section, shall not sell or rent supplies to such a bingo licensee until all the bingo licensee's account(s) are brought within the time period provided for within subsection (A)(3) of this section.

#### **4.23.050 Required records.**

Licensed bingo suppliers shall maintain a complete set of records which includes details of all activities. These records shall include, but are not to be limited to, the following:

A. Preprinted sales invoices which reflect the following information:

1. Date of sale;
2. The customer name and complete business address;
3. A description and stock number of each line item sold; and
4. Quantity and sales price of each line item.

B. The original and two copies of the preprinted sales invoice shall be prepared and maintained as follows:

1. Original issued to the customer;
2. A copy retained in a file by customer name; and
3. A copy file in (invoice number) numerical sequence.

C. Credit memos for returned items shall be prepared in the same detail as items described in subsection (A) of this section.

#### **4.23.055 Computerized equipment.**

A. Except as provided in subsection (B) of this section, it shall be unlawful for bingo suppliers licensed under this chapter to:

1. Sell, rent, supply, provide or furnish machines, devices, or equipment that is computerized, electronic, or mechanical to an organization licensed to conduct bingo pursuant to EGMC Chapter 4.21 for use in a bingo game; or
2. Sell, rent, supply, provide, or furnish equipment for use in a bingo game in which the numbers to be called are selected by electronic means rather than by random selection of numbered balls from a pool of game balls.

B. Electronic Bingo Aid.

1. Purpose. The purpose of this subsection is not to permit a licensed bingo supplier to sell, rent, supply, provide or furnish to organizations licensed to conduct bingo pursuant to EGMC Chapter 4.21 all electronic aids for use in bingo. The purpose is to permit the licensed supplier to sell, rent, supply, provide or furnish to such organizations the use of electronic bingo aids on the conditions set forth herein. It is contemplated that an electronic bingo aid will include individual units or components to be used by players and that these units or components will be activated by the organizations licensed to conduct bingo for a player's operation. These individual player units or components are handheld devices or desktop devices to be used in conjunction with bingo cards. It is contemplated that an electronic bingo aid will permit a bingo player to input into an activated individual player unit or component randomly selected numbers called by an organization licensed to conduct bingo pursuant to EGMC Chapter 4.21 in order to match such numbers against programmed information to identify a winning card. The programmed information reflects the exact configurations of the bingo cards sold to and played by the player. The electronic bingo aid is not to alter the bingo cards. The electronic bingo aid is to be used in conjunction with bingo cards in order to assist the player in identifying a winning card. The electronic bingo aid is not to be used as an electronic or computerized game of bingo, or as a substitute for required bingo cards, or as a substitute for any other requirements of bingo as provided in EGMC Chapter 4.21 or in Section 326.5 of the Penal Code.

2. An electronic bingo aid to assist in the identification of a winning card or paper may be sold, rented, supplied, provided or furnished to an organization licensed pursuant to EGMC Chapter 4.21 to conduct bingo by a licensed bingo supplier if the licensed bingo supplier complies with the conditions set forth in subsections (B)(3) through (B)(11) of this section, and if the supplier complies with all other required provisions of this chapter and Section 326.5 of the Penal Code. Violation of any or all of such provisions and conditions shall constitute grounds for revocation, suspension, or denial of the special

business license to conduct the business of a bingo supplier, pursuant to the procedures set forth in this chapter and EGMC Chapters 4.02 and 4.10.

3. An electronic bingo aid shall assist a player to mark, otherwise register, or record, numbers selected at random in order to identify a winning bingo card. An electronic bingo aid shall not replace or alter bingo cards. The electronic bingo aid shall be programmed either by the supplier licensee at the direction and as specified by an organization licensed to conduct bingo pursuant to EGMC Chapter 4.21, or by the organization licensed to conduct bingo. The electronic bingo aid shall be programmed only with bingo card configurations corresponding exactly to bingo card configurations used by such licensed organization. A copy of any change made by the supplier licensee in the program of a programmed electronic bingo aid shall be submitted to the Chief of Police. The electronic bingo aid shall permit licensed organizations to enable the electronic bingo aid, including the individual player-operated units or components, for play on the premises where the games are conducted. The electronic bingo aid shall not interfere or interact with the element of chance in the game.

4. The electronic bingo aid shall permit a player to use a player-operated unit or component of the electronic bingo aid to manually input numbers called in a bingo game into the electronic bingo aid. Automatic daubing shall not be a feature of the electronic bingo aid. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed by EGMC Chapter 4.21 to conduct the games, and the individual player-operated units or components of the electronic bingo aid used by a player, shall identify winning cards during a game. The portion of the electronic bingo aid system in the immediate physical possession and operation of the organization licensed to conduct bingo shall be capable of printing a winning card for verification during the game; the individual player-operated units or components shall not have this feature.

5. A particular type of electronic bingo aid shall not be sold, rented, supplied, provided or furnished to an organization licensed to conduct bingo pursuant to EGMC Chapter 4.21 by a licensed bingo supplier until the licensed supplier has demonstrated the electronic bingo aid to the Chief of Police, and such electronic bingo aid has been inspected by, and approved by, the Chief of Police.

6. An electronic bingo aid may be removed from the place where the games are conducted solely by the supplier licensee for repair or to transfer to another organization licensed to conduct bingo pursuant to EGMC Chapter 4.21 for the conduct of bingo. The supplier licensee shall keep a record of the bingo electronic aid received; the date received; the repairs made, if any; the particular malfunction, if any; the name of the licensed organization that the electronic bingo aid or part thereof was removed from;



and the date the aid or part thereof is returned to an organization if returned, or notation of what action taken if not returned.

7. The electronic bingo aid shall have a dial-up capability so that the Chief of Police may remotely monitor the operation and internal accounting system of the electronic bingo aid at any time. The electronic bingo aid shall contain a point of sale accounting system that allows it to track all financial activity for a bingo session. The bingo supplier licensee's accounting records pertaining to electronic bingo aids shall be retained as prescribed by EGMC Section 4.23.050. An electronic bingo aid shall work with an accounting system that records, and retains for a retention period of not less than that found in EGMC Section 4.21.080, the serial number of each bingo card or face sold, the price of each card sold, and the total amount of the electronic bingo aid proceeds from each session. An electronic bingo aid's capabilities and information must not be lost through power failure or other disruption during the session.

8. An electronic bingo aid shall have the capability to permit organizations licensed to conduct bingo to print the configurations of the bingo cards or papers that are programmed into the device; but, the individual player-operated units or components shall not have this feature.

9. The electronic bingo aid including related circuitry shall be sealed and secured in order to prevent unauthorized removal, additions, changes, or other alterations or tampering with the data within such electronic bingo aid.

10. If the Chief of Police detects or discovers any problem with an electronic bingo aid, including the player-operated electronic bingo aid unit or component, or any related system or parts, that affects the integrity of the bingo game, or such equipment, the Chief of Police may, upon demand, examine and inspect such equipment, as applicable, if it is in possession of the supplier licensee after removal from the place where the game of bingo is conducted. The Chief of Police may upon demand examine and inspect any electronic bingo aid, player-operated unit or component of an electronic bingo aid, or related system or parts, for sale, rent, supply, or to be provided or furnished by the supplier licensee to an organization licensed to conduct bingo. Such examinations and inspections shall include immediate access to the electronic bingo aid, including the player-operated unit or component of an electronic bingo aid, and unlimited inspection of all parts and associated systems, as applicable; and may involve the removal of such equipment, as applicable, from the supplier licensee's premises or possession for further testing. Upon the Chief of Police's demand, the supplier licensee shall immediately comply and cooperate with the Chief of Police for such examinations, inspections, or removals.

11. If at any time the Chief of Police detects or discovers any problem with an electronic bingo aid, or with a player-operated bingo unit or component of the electronic bingo aid, or with any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the Chief of Police may order the supplier licensee to cease the sale, rental, supply, or provision or furnishing of such electronic bingo aid or player-operated unit or component, as applicable, to an organization licensed to conduct bingo, and the supplier licensee shall comply immediately with such Chief of Police's order.

12. If at any time the supplier licensee detects or discovers any problem with an electronic bingo aid, or with a player-operated unit or component of the electronic bingo aid, or any related system or parts, that affects the security or the integrity of a bingo game or such equipment, the supplier licensee shall cease immediately to sell, rent, supply, provide, or furnish the electronic bingo aid or player-operated unit or component, as applicable, to an organization licensed to conduct bingo, and shall notify the Chief of Police, and organizations licensed to conduct bingo who have secured possession of such electronic bingo aid from such bingo supplier, of such malfunction, problem or occurrence.

#### **4.23.060 Temporary suspension of license pending opportunity for hearing.**

The Chief of Police shall have the authority to temporarily suspend the supplier's license by ordering in writing that the licensee immediately cease and desist any further operations of the bingo supply business pending expiration of the time for appeal or exhaustion of an appeal pursuant to the provisions and notice procedure of EGMC Section 4.10.145 if the Chief of Police finds that such temporary suspension is necessary in order to protect against a serious and immediate threat to the health or safety of the public caused by exercise of the license, and one of the following occurs:

A. The supplier licensee is conducting its operation in violation of any of the provisions of this chapter, Section 326.5 of the Penal Code, the City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation;

B. The supplier licensee has not made available for the conduct of a compliance examination, audit, review, inspection, or for photocopying, at any reasonable time upon the demand of the Chief of Police all records necessary to determine or establish compliance with the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation; or

C. The supplier licensee has not kept records as prescribed by the Chief of Police, this chapter, Section 326.5 of the Penal Code, City regulations adopted pursuant to this chapter, or any other applicable state of California, City of Elk Grove, federal law, or

administrative rule or regulation; or, has not kept records necessary to determine compliance with applicable laws and administrative rules and regulations pursuant to generally accepted principles of accounting when such records are not prescribed to be kept in any specific manner or type by the Chief of Police, this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation.

**4.23.065 Notice of temporary suspension and appeal – Appeal of underlying suspension and revocation.**

A. The temporary suspension shall be effective no sooner than twenty-four (24) hours following the time and date of delivery of the notice thereof as is provided in EGMC Section 4.10.145 and the procedures for appeal and notice of temporary suspension shall be as prescribed in EGMC Section 4.10.145.

B. Upon timely request by the licensee, the appeal hearing process and related procedures of the revocation or suspension of its license pursuant to EGMC Section 4.10.135 shall proceed pursuant to the provisions of EGMC Sections 4.10.115 through 4.10.155.

**4.23.075 Operating and conducting business after temporary suspension or suspension.**

Any person(s) who continues to operate and conduct the business of a bingo supplier after temporary suspension pursuant to EGMC Section 4.23.065, or suspension pursuant to EGMC Section 4.10.135, is guilty of a misdemeanor.

**4.23.080 Receipt of profit by a person and penalty for violation of this chapter.**

A. It is a misdemeanor under Section 326.5(b) of the Penal Code for any person to receive or pay a profit, wage or salary from any bingo game authorized under this chapter. Payment received by a bingo supplier for supplies purchased by a bingo licensee licensed pursuant to EGMC Chapter 4.21 shall not be deemed a violation of this section. A violation of this prohibition is punishable by a fine not to exceed Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars payable to the General Fund of the City of Elk Grove.

B. A violation of any of the provisions of this chapter, City regulations adopted pursuant to this chapter, Section 326.5 of the Penal Code, or any other applicable state of California, City of Elk Grove, federal law, or administrative rule or regulation shall be grounds for the Chief of Police to suspend, revoke, or deny the renewal of a special business license for a bingo supplier issued pursuant to the provisions of this chapter.

## **Chapter 4.25**

### **PAWNBROKERS, SECONDHAND DEALERS AND JUNK DEALERS**

#### Sections:

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4.25.015 Display of license.

4.25.020 Daily report.

4.25.025 Contents of reports.

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4.25.045 Time limit for sale.

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4.25.055 Receipt of goods – Prohibited persons.

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4.25.065 Hours.

4.25.070 Construction requirements.

4.25.075 Sanitation of premises.

4.25.080 Separate businesses.

4.25.085 Bond.

4.25.090 Reporting stolen goods.

4.25.095 Inspection.

#### **4.25.000 Purposes.**

Pawnbrokers, secondhand dealers and junk dealers and collectors constitute prime vehicles for the disposal and sale of stolen property within the City. The purposes of this chapter are to regulate the activities of such enterprises for the purpose of facilitating law enforcement's apprehension of criminals and recovery of stolen property and to curtail the trafficking of stolen property.

This chapter is enacted pursuant to the provisions of Section 21638 of the Business and Professions Code. The provisions of this chapter shall not be construed to require any act or omission which is expressly prohibited or prohibit any act or omission which is expressly required by the provisions of Sections 21625 through 21647 of the Business and Professions Code.

#### **4.25.005 License required.**

It is unlawful for any person to operate or conduct the business of pawnbroker, secondhand dealer, junk dealer or junk collector, unless under and by authority of a valid, unexpired and unrevoked special business license issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

Notwithstanding the provisions of EGMC Section 4.10.040(A)(3) and EGMC Section 4.10.100, the Chief of Police shall not deny a special business license for the business of pawnbroker, secondhand dealer, junk collector or junk dealer on grounds enumerated by EGMC Section 4.10.040(A)(3) unless one or more of the persons identified in EGMC Section 4.10.040(A)(3) have been convicted of an offense described by Section 21641 of the Business and Professions Code. A license shall not be revoked on grounds prescribed by EGMC Section 4.10.135(B) unless one or more of the persons identified by EGMC Section 4.10.040(A)(3) have been convicted of an offense described by Section 21641 of the Business and Professions Code.

#### **4.25.010 Definitions.**

As used in this chapter, the following terms shall be ascribed the following meanings:

A. "Pawnbroker" shall mean a person engaged in conducting, managing or carrying on the business of pawnbrokering, or the business of lending money for him or herself or any other person upon personal property, pawns or pledges; or the business of purchasing articles from the vendors or their assignees at prices agreed upon at or before the time of such purchase.

B. "Pawnshop" shall mean any room, store, building or other place in which any pawnbrokering business is engaged in, carried on or conducted.

C. "Secondhand dealer" shall mean a person engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, furniture, wares, coins or merchandise.

D. "Junk dealer" shall mean a person having a fixed place of business in the City, and engaged in conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, papers, metal, or other articles commonly known as junk.

E. "Junk collector" shall mean a person not having a fixed place of business in the City, who goes from house to house, or from place to place, gathering, collecting, buying, selling, or otherwise dealing in any old rags, sacks, bottles, cans, papers, metal or other articles commonly known as junk.

**4.25.015 Display of license.**

Every person issued a special business license under the provisions of this chapter, and conducting, managing or carrying on a business or occupation at a fixed place of business, shall keep such license posted and exhibited while in force in some conspicuous part of the place of business. Every person having such license and not having a fixed place of business shall carry such license with him at all times while carrying on the business or occupation for which the same was granted. Every person having a license under the provisions of this chapter shall produce and exhibit the same when applying for a renewal thereof and whenever requested to do so by any officer authorized to issue, inspect or collect licenses.

**4.25.020 Daily report.**

Every pawnbroker and secondhand dealer shall send to the Chief of Police the daily electronic report in the format required by Section 21628(j)(2) of the Business and Professions Code. The report shall be sent electronically to the Chief of Police by a method and format acceptable to him or her.

Every junk dealer and junk collector shall send to the Chief of Police in an electronic format approved by the Chief of Police a daily report of all information required to be gathered by Section 21606 of the Business and Professions Code. The report shall be sent electronically by a method determined by the Chief of Police.

**4.25.025 Contents of reports.**

The contents of the reports to be sent at the close of each business day to the Chief of Police shall be as provided in Section 21628 of the Business and Professions Code for pawnbrokers and secondhand dealers and in Section 21606 of the Business and Professions Code for junk dealers and junk collectors.

#### **4.25.030 Records.**

Every pawnbroker and secondhand dealer shall keep a complete record of all goods, wares, merchandise or things pledged to or purchased or received by him, sold or otherwise disposed of, which shall contain all the matters required to be shown in the reports required to be made by such pawnbroker or secondhand dealer and referred to and described in EGMC Sections 4.25.020 and 4.25.025.

Every junk dealer and junk collector shall keep a record of all goods, wares, merchandise or things purchased or received by him, sold or otherwise disposed of, which record shall contain all the matters required to be shown in the reports referred to and described in EGMC Sections 4.25.020 and 4.25.025.

Every such record and all goods, wares, merchandise and things pledged to or pledged or received by any such pawnbroker, secondhand dealer, junk dealer or junk collector shall be immediately produced for inspection by any officer required to inspect such records or personal property in the performance of his official duties.

#### **4.25.040 Use of English language required.**

Every report and record required by the terms of this chapter to be filed or kept shall be written or printed entirely in the English language, in a clear and legible manner.

#### **4.25.045 Time limit for sale.**

It is unlawful for any pawnbroker, secondhand dealer, or junk dealer to sell or otherwise dispose of any article or thing, the report of which is required to be made under the provisions of EGMC Sections 4.25.020 and 4.25.025, within one (1) week after making a report to the Chief of Police as required in EGMC Section 4.25.020. The provisions of this section shall not apply to motor vehicles duly and regularly cleared for transfer by the Department of Motor Vehicles of the state.

#### **4.25.050 Junk dealer not to accept pledges or pawns.**

No junk dealer or junk collector shall receive any personal property by way of pledge or pawn, nor shall the business of junk dealer and the business of pawnbroker be conducted upon the same premises.

#### **4.25.055 Receipt of goods – Prohibited persons.**

It is unlawful for any pawnbroker, secondhand dealer, junk dealer or junk collector, to receive or purchase any property, article or thing, from any person who shall appear to be, or who is known to be, intoxicated, or from any minor, unless the minor presents the written consent of his parent or guardian, duly signed, authorizing the particular

transaction, which written consent must be kept, and exhibited, upon demand, by any officer requesting the same in the performance of his official duties.

In any criminal prosecution, or proceeding for the suspension or revocation of any license for a violation of this section, proof that the defendant licensee, or his agent or employee, demanded and was shown, before receiving or purchasing any property, article or thing, a motor vehicle operator's license or a registration certificate issued under the Federal Selective Service Act, or other bona fide documentary evidence of the majority and identity of the person, is a defense to the prosecution or proceeding for the suspension or revocation of any license.

#### **4.25.060 Nonapplicability of sections.**

The provisions of EGMC Sections 4.25.020 through 4.25.045 shall not apply to the receipt of, or sale of, secondhand personal property which has been received as part payment for a new article if the person receiving or selling the secondhand personal property is the authorized dealer or agent of the manufacturer of the new article sold.

#### **4.25.065 Hours.**

It is unlawful for any person engaged in, conducting, managing or carrying on the business of pawnbroker, secondhand dealer, junk dealer or junk collector, or for any agent or employee of any such person, to accept any pledge, or to loan any money upon personal property or to receive or purchase any goods, wares or merchandise, or any article or thing between midnight on Saturday and 7:00 a.m. the following Monday, or between 7:00 p.m. of any day other than Saturday and Sunday, and 7:00 a.m. the following day.

#### **4.25.070 Construction requirements.**

If any business or establishment required by EGMC Section 4.25.005 to possess a special business license is located in whole or in part in any yard, enclosure, lot, or open area, such premises as are open to public view shall be completely surrounded and enclosed by a wall, fence or barrier constructed of wood or other solid, impervious material, and so constructed as to be a continuous barrier, except for necessary openings, sufficient to prevent the ingress or egress of rats, mice, or other rodents so far as is possible. Should any part of such yard, enclosure, lot or open area abut upon any earthen embankment, the height of which shall not be less than the minimum height of the wall, fence or barrier herein provided for, such part so abutting upon the earthen embankment need not be enclosed by a wall, fence or barrier. The wall, fence or barrier shall be continuously kept and maintained in the condition required by this section. The wall, fence or barrier shall extend above the ground for at least six (6'0") feet. Any and all necessary openings in such fence, wall or barrier shall be provided with suitable



gates or doors. No such openings shall in any single instance be greater than is reasonably necessary.

Such gate or door shall be kept closed at all times except during the normal business hours of the business or establishment.

It is unlawful for any person to permit any such business or establishment referred to and described in this chapter to be established, conducted, carried on or maintained unless the premises shall have been rendered rodent-proof as far as reasonably possible, and continuously maintained in such condition. Each day's violation of the requirements declared and established by this chapter shall be and constitute a separate and distinct violation and offense.

#### **4.25.075 Sanitation of premises.**

If any business or establishment required by EGMC Section 4.25.005 to possess a special business license is located in whole or in part in a yard, enclosure, lot or open area, such premises and area shall, so far as reasonably possible, be kept clean and free from rubbish and similar loose material that might serve as a harborage for rats, mice or other rodents, and all loose metal, or parts or accessories of automobiles, and all other material kept, stored or accumulated on the premises, shall, so far as reasonably possible, be neatly and carefully piled, in such manner as to minimize and prevent as far as possible the harborage of rodents, and shall be suitably protected from water and the elements so that there can be, so far as is practicable, no accumulation of water in any article or thing stored on the premises.

#### **4.25.080 Separate businesses.**

If any person shall engage in, conduct, manage or carry on, at the same time, more than one of the businesses defined by EGMC Section 4.25.010, such person shall be deemed to be engaging in, conducting, managing and carrying on each such business separately and apart from the other such business, and such person shall comply in all respects with the provisions of this chapter relating to each such business, and it is unlawful for any such person to fail, refuse or neglect so to do.

#### **4.25.085 Bond.**

Every junk dealer, as defined herein, shall furnish to the City a bond in the principal amount of Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars guaranteeing faithful performance by the junk dealer of the terms and conditions of this chapter.

#### **4.25.090 Reporting stolen goods.**

Every pawnbroker, secondhand dealer, junk dealer and junk collector shall immediately notify the Chief of Police by telephone when any property is offered to him for pledge or for sale under such circumstances that the pawnbroker, secondhand dealer, junk dealer or junk collector knows or should have known the property so offered for pledge or sale to have been stolen.

#### **4.25.095 Inspection.**

The Chief of Police or the City Manager or their designees may conduct an inspection of the premises of a pawnbroker, secondhand dealer, or junk dealer at any time during regular business hours for the purpose of determining that the business is being operated in compliance with all requirements under state law and the Elk Grove Municipal Code.

### **Chapter 4.26**

#### **JUNK TIRE STORAGE**

Sections:

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4.26.015 License required.

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##### **Article II. Requirements – Services**

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### **Article I. Special Business License Required**

#### **4.26.000 Purposes.**

The improper storage and the careless disposal of junk tires jeopardize the public health, safety and welfare of City residents and visitors. Large numbers of these junk tires randomly placed in buildings or fields are breeding grounds for disease-carrying insects and animals. If large numbers of these junk tires are ignited by fire, those fires are extremely difficult and expensive to extinguish and the smoke from those fires presents a serious hazard to the environment. Furthermore, large numbers of junk tires carelessly strewn about offend the aesthetic sensibilities of the residents of the City.

The regulatory provisions of this chapter are necessary to ensure reasonable storage of these junk tires and thereby minimize the jeopardy to the public health, safety and welfare.

This enactment will provide criminal penalties to those who violate its requirements. It will also provide a means of enforcing abatement of the nuisance caused by the unreasonable storage of large numbers of junk tires.

This enactment does not apply to tires that do not meet the definition of “junk tires” as set forth herein. Tires that are not junk tires have economic value and are therefore not indiscriminately discarded in large quantities as are junk tires. Further, while tires other than junk tires present the same fire extinguishment problems and environmental hazards as junk tires, the City Council finds they are usually stored in a manner that minimizes these problems and hazards.

#### **4.26.005 City Manager.**

The City Manager is charged with the responsibility of administering this chapter and exercising the authority conferred thereby. Such authority shall include the power and duty to issue special business licenses authorizing junk tire storage, promulgation and enforcement of administrative regulations and the performance and exercise of the duties and authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to junk tire storage and the issuance and administration of special business licenses therefor as are vested in the Chief of Police under EGMC Chapter 4.02 and 4.10. Any reference to the “Chief of Police” in these sections as that reference relates to the issuance, renewal or denial of a special business license or as that reference relates to the appeal of a denial, revocation or suspension of a special business license shall be deemed a reference to the City Manager in relation to this junk tire storage chapter.

Also, the City Manager shall be vested with the same powers and authorities in relation to abatement of violations of this junk tire storage chapter as are vested in the Public Works Director under EGMC Chapter 16.18. Any reference in that chapter to the “Director of the Public Works Department” shall be deemed a reference to the City Manager in relation to abatement of violations of this junk tire storage chapter.

#### **4.26.010 Definitions.**

As used in this chapter, the following terms shall be ascribed the following meanings:

- A. “Premises” means a unit of improved or unimproved land, or any portion thereof, shown on the latest equalized City assessment roll as a parcel or as contiguous parcels. Property shall be considered as contiguous parcels even if separated by a utility easement or railroad right-of-way.
- B. “To store” means to leave, deposit, accumulate, abandon or discard.
- C. “Storage” means the act of storing.

D. "Junk tire" means a not new automobile, truck or any other type of motorized vehicle tire that is not directly attached to an operational vehicle and does not meet the federal or state of California requirements for used tires or recappable casings.

**4.26.015 License required.**

It is unlawful for any person to store five hundred (500) or more junk tires either inside or outside a building for any length of time on or about any one particular premises within the City which is owned, leased or in any manner utilized by that person unless the storage is under and by authority of a valid, unexpired, unrevoked and unsuspended special business license issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

**4.26.020 Number of licenses required.**

Notwithstanding EGMC Section 4.10.010, a person who stores five hundred (500) or more junk tires either inside or outside a building for any length of time at one or several premises throughout the City shall be required to obtain a special business license for each particular premises where five hundred (500) or more junk tires are stored.

**4.26.025 Display of license.**

Every person issued a special business license under the provisions of this chapter shall keep the license posted and exhibited in a conspicuous part of the particular premises where the five hundred (500) or more junk tires are stored.

**4.26.030 Application.**

In addition to the information required by EGMC Section 4.10.030, an application shall contain the following:

- A. All names under which the applicant has engaged, does or proposes to engage in junk tire storage;
- B. An accurate legal description, including assessment number, of the particular premises where the junk tires are to be stored;
- C. The name and street address of any person with a legal ownership interest in the particular premises where the junk tires are to be stored;
- D. The written consent of any person with a legal ownership interest in the anticipated junk tire storage premises to the storage of junk tires on those premises and to the requirements and obligations imposed on these owners by this chapter. The written consent form shall be furnished by the City Manager and all signatures on this form shall be notarized in accordance with California law;

E. Factual information, as specific as possible, as to the maximum number of junk tires expected to be stored on the particular premises at any one time and the number of junk tires expected to be transferred onto or off of the particular premises on a daily, weekly and monthly basis;

F. A written statement from the Chief of the Fire Protection District with jurisdiction over the proposed junk tire storage premises discussing in detail any fire hazard that would be created by the storage of junk tires on or about the particular premises; and

G. The name and street address within the City of an individual authorized to accept service of legal process or any notices issued pursuant to this chapter.

**4.26.035 Issuance.**

A. The City Manager shall issue a special business license to allow storage of junk tires unless:

1. One or more of the findings prescribed by EGMC Section 4.10.040(A)(1), (2) and (4) are made; or

2. The City Manager finds in writing that the use of the particular premises for junk tire storage would not be in compliance with the Zoning Code and has not been approved by the appropriate body through any required use permit hearing process; or

3. The City Manager finds in writing that based upon detailed information provided by the Cosumnes Community Services District or other appropriate fire prevention experts and officials, the proposed storage of junk tires on the particular premises would constitute a dangerous fire hazard.

B. The requirements of EGMC Sections 4.10.035 and 4.10.040(A)(3) shall not be applicable to this chapter for issuance of a special business license.

**4.26.040 Change of information.**

The applicant shall report to the City Manager any change in the information required by EGMC Section 4.26.030 within ten (10) days of the effective date of the change except that the information required by EGMC Section 4.26.030(C) shall be reported immediately. An updated written consent form pursuant to EGMC Section 4.26.030(D) shall be required immediately upon a change in the information required by EGMC Section 4.26.030(C).

## **Article II. Requirements – Services**

### **4.26.045 Inspections.**

Premises on which junk tires are stored pursuant to a special business license shall be open during regular working hours for inspection by the City Manager or his or her designated representative. Inspections shall occur as frequently as determined necessary by the City Manager but in no event shall there be less than six (6) inspections per year of each particular premises where junk tires are stored pursuant to a special business license.

The refusal by a licensee, or an officer, employee or agent thereof, to permit inspection by the City Manager, or his or her designated representative, pursuant to the authority conferred by this section shall constitute grounds for suspension or revocation of the special business license.

The refusal by a licensee, or an officer, employee or agent thereof, to permit such inspections by the Chief of the Cosumnes Community Services District Fire Department, or his or her designated representative, as may be reasonably necessary to ensure compliance with EGMC Section 4.26.055 shall also constitute grounds for suspension or revocation of a special business license issued pursuant to this chapter.

### **4.26.050 Indemnification.**

The licensee and the legal owners of the premises where junk tires are stored pursuant to this chapter shall indemnify, hold harmless and, upon written request, assume any and all costs of the legal defense of the City, its officers, employees and agents from all claims, losses, damages, injuries and liabilities of every kind, nature and description directly or indirectly arising from the performance of activities and operations permitted by a special business license issued pursuant to this chapter.

### **4.26.055 Fire protection.**

The licensee shall provide such fire protection measures and equipment as may be required by all applicable laws, and as the Chief of the Cosumnes Community Services District Fire Department finds reasonably necessary to provide adequate fire protection to the immediate and adjacent premises. No junk tires may be stored on particular premises pursuant to this chapter unless and until the written statement required by EGMC Section 4.26.030(F) is obtained from the Chief of the Cosumnes Community Services District Fire Department.

### **4.26.060 Existing junk tire storage compliance schedule.**

Any person who presently stores junk tires and who will be required to obtain a special business license pursuant to this chapter upon its adoption may be granted by the City Manager a maximum of three (3) months to comply with all of the requirements of this chapter; provided, that public health, safety and welfare of the City residents and visitors will not be unreasonably jeopardized thereby.

**4.26.065 Employee permits not required.**

EGMC Section 4.10.070 and related sections of EGMC Chapter 4.10 requiring employee permits for personnel of special business licenses shall not be applicable to this chapter.

**Article III. Penalties**

**4.26.070 Fine, imprisonment and expenses for compliance.**

Notwithstanding the provisions of EGMC Section 4.02.100, any person who violates any of the provisions of this chapter, or fails to comply with any of the regulatory requirements adopted by the City Manager pursuant to this chapter, is guilty of a misdemeanor, and upon conviction may be punished by a fine not to exceed One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars or by imprisonment not to exceed six (6) months, or by both. In addition, each such person shall be required to pay any and all expenses necessary to bring the subject premises into compliance with this chapter and any regulatory requirements adopted by the City Manager pursuant to this chapter. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter, or regulatory requirements adopted by the City Manager pursuant to this chapter, is committed, continued, or permitted by any such person, and he shall be punished accordingly.

**4.26.075 Injunctive relief.**

In addition to the penalties set forth in EGMC Section 4.26.070 and consistent with the provisions of EGMC Section 4.26.090, any storage of junk tires contrary to the provisions of this chapter, or any regulations adopted by the City Manager pursuant to this chapter, shall be and the same is hereby declared to be unlawful and a public nuisance. The City Manager may commence action for the abatement and removal and enjoinder of this public nuisance in the manner provided by law. The City Manager may take such other steps and may apply to such court or courts as may have jurisdiction to grant relief as will abate and remove such junk tires and restrain and enjoin any person, firm or corporation from using any premises contrary to the provisions of this chapter.



#### **4.26.080 Revocation.**

A. In addition to the grounds set forth in EGMC Section 4.10.135 and in addition to the penalties prescribed in EGMC Sections 4.26.070 and 4.26.075, a special business license may be revoked during its term if the City Manager finds in writing that one or more of the following grounds exists:

1. Violation by the licensee of any of the terms, conditions or requirements of this chapter;
2. Violation by the licensee of any administrative regulation or rule promulgated pursuant to the provisions of this chapter;
3. Failure of the licensee to comply with any applicable City, state or federal law; and
4. Refusal of the licensee to permit an inspection pursuant to EGMC Section 4.26.045.

B. Except for the junk tires on the subject premises at the time of the revocation, no other junk tires shall be stored on the subject premises pending final determination of the revocation proceedings. Nothing in this section shall be construed as precluding the removal of any junk tires from the subject premises.

#### **4.26.085 Temporary suspension.**

A. In addition to the matters prescribed by EGMC Section 4.10.145 and in addition to the penalties prescribed in EGMC Sections 4.26.070 and 4.26.075, a special business license issued pursuant to this chapter may be temporarily suspended pending expiration of the time for appeal or exhaustion of an appeal if the City Manager finds that such temporary suspension is necessary to protect against a serious and immediate threat to public health, safety or welfare caused by the exercise of the license. In the event the City Manager orders a temporary suspension, the notice of the suspension shall be delivered to the address of the agent designated in the application as authorized to accept service of legal process for each junk tire storage premises to which the suspension pertains. The notice shall contain the following:

1. The finding justifying the temporary suspension;
2. The time, date and place at which the licensee may appear in advance of the commencement of the temporary suspension for the purpose of responding to the charges contained in the notice; and
3. The time and date on which the temporary suspension commences, which shall not be earlier than twenty-four (24) hours following the time and date of delivery of the notice.

B. Restoration of special business license privileges following a temporary suspension may be granted by the City Manager upon the establishment of such terms, conditions and requirements as are reasonably necessary to protect the public health, safety and welfare of the City residents and visitors.

C. Except for the junk tires on the subject premises at the time of the temporary suspension, no other junk tires shall be stored on the subject premises pending final determination of the temporary suspension proceedings. Nothing in this section shall be construed as precluding the removal of any junk tires from the subject premises.

#### **4.26.090 Abatement.**

Junk tires stored in violation of this chapter are within the meaning of the term “rubbish” as that term is used in EGMC Chapter 6.06. The provisions of EGMC Chapter 6.06 shall be applicable to abatement of violations of this chapter relating to junk tire storage. In the event that a particular premises is rented or leased or otherwise utilized by a person other than the property owner, that person, in addition to the property owner, shall be held responsible and liable for any costs of abatement that result from the implementation of this section. For the purposes of this chapter, nothing in EGMC Chapter 6.06 or in this chapter shall be interpreted as imposing a requirement that the City, its officers, agents or employees remove or cause to be removed any junk tires stored contrary to this chapter.

#### **4.26.095 Nature of enforcement actions.**

Any action or proceeding commenced or continued by the City Manager or the City against a person for violations of this chapter, or any regulations or rules adopted by the City Manager pursuant to this chapter, shall be deemed actions or proceedings to enforce the police or regulatory power of the City.

#### **4.26.100 Appeals.**

The appeals procedure set forth in EGMC Sections 4.10.115 through 4.10.155, as those sections relate to special business licenses, shall be applicable to this chapter relating to junk tire storage.

### **Chapter 4.27**

#### **TOBACCO RETAILERS**

Sections:

4.27.010 Legislative findings.

4.27.020 Purpose.

4.27.030 Definitions.

4.27.040 Requirement for tobacco retailers license.

4.27.050 Application procedure.

4.27.060 Issuance and renewal of license.

4.27.070 Display of license.

4.27.080 License fee.

4.27.090 License nontransferable.

4.27.100 License violation.

4.27.110 Suspension or revocation of license.

4.27.120 Denial, suspension, and revocation – Appeals.

4.27.130 Enforcement.

**4.27.010 Legislative findings.**

The City Council finds and determines that:

A. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Section 308 of the Penal Code).

B. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under eighteen (18) years of age (Section 22956 of the Business and Professions Code) and provide procedures for using persons under eighteen (18) years of age to conduct on-site compliance checks of tobacco retailers (Section 22952 of the Business and Professions Code).

C. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under eighteen (18) years of age is illegal (Section 22952 of the Business and Professions Code; Section 308 of the Penal Code).

D. State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (Section 22962 of the Business and Professions Code).

E. State law prohibits the sale of “bidis” (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except at those businesses that prohibit the presence of minors (Section 308.1 of the Penal Code).

F. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than twenty (20) and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 60/100<sup>ths</sup> (0.60) ounces of tobacco (Section 308.3 of the Penal Code).

G. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Section 48901(a) of the Education Code).

H. EGMC Section 6.86.070 prohibits the sale or distribution of tobacco products from vending machines.

I. In May of 2004, the Sacramento County Department of Health and Human Services Tobacco Education Program found that seventeen (17%) percent of tobacco retailers sampled in the County unlawfully sold tobacco products to minors; clerks in several types of outlets, including supermarkets, convenience marts/gas stations, drug stores, and small markets, sold tobacco to minors; and less than forty-five (45%) percent of the stores surveyed displayed the STAKE Act signs required by state law.

J. Eighty-eight (88%) percent of adults who have ever smoked tried their first cigarette by the age of eighteen (18), and the average age at which smokers try their first cigarette is fourteen and one half (14.5) years of age.

K. The City of Elk Grove has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

L. California courts in *Cohen v. City Council*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.

M. State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (Section 22971.3 of the Business and Professions Code).

N. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws.

#### **4.27.020 Purpose.**

The purpose of this chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.

#### **4.27.030 Definitions.**

As used in this chapter, the following words and phrases shall have the meanings given them in this section, unless the context clearly requires otherwise:

A. "Itinerant tobacco retailing" means engaging in tobacco retailing at other than a fixed location.

B. "License" means a tobacco retailer special business license issued by the City pursuant to this chapter.

C. "Licensee" means any proprietor holding a license issued by the City pursuant to this chapter.

D. "Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

E. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten (10%) percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

F. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

G. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products.

H. "Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

I. "Tobacco retailing" shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

#### **4.27.040 Requirement for tobacco retailers license.**

A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

B. Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Section 6404.5 of the Labor Code.

#### **4.27.050 Application procedure.**

All applications for a license shall be submitted to the City Manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the City Manager and shall contain the following information:

A. The name, address, e-mail address, if any, and telephone number of each proprietor.

B. The business name, address, and telephone number of the fixed location for which a license is sought.

C. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

D. Such other information as the City Manager deems necessary for the administration or enforcement of this chapter.

**4.27.060 Issuance and renewal of license.**

A. Upon the receipt of an application for a license and the applicable license fee, the City Manager shall issue a license or its renewal unless:

1. The application is incomplete or inaccurate;

2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter except this subsection shall not constitute a basis for denial of a license if either or both of the following apply:

The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subsection, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location is presumed not to be an "arm's length transaction";

It has been more than five (5) years since the most recent license for that location was revoked;

3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law; or

4. The City Manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding thirty (30) day period.

B. Unless revoked on an earlier date, all licenses shall expire one (1) year after the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding license, the City Manager shall transmit to the licensee by mail an application for renewal. The application submitted for renewal shall be in such form and include such information as is prescribed and required by the City Manager, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. A license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. An application for renewal and license fee shall be submitted at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the current valid license. The renewal applicant shall follow all of the procedures and provide all of the information required in EGMC Section 4.27.050. The City Manager shall process the application according to the provisions of this section.

C. Where the City Manager does not approve a license or renewal of a license, the City Manager shall notify the applicant of the specific grounds for the denial in writing. The notice of denial shall be served personally or by first class certified mail, return receipt requested, not later than five (5) days after the date of the denial. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

#### **4.27.070 Display of license.**

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

#### **4.27.080 License fee.**

The fee for issuance or renewal of a license shall be established by resolution of the City Council and shall be in addition to the fees associated with any other license or permit fee imposed by this code upon the applicant. The license fee shall be paid to the City at the time the license application is submitted.

#### **4.27.090 License nontransferable.**

A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a



business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer.

#### **4.27.100 License violation.**

It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law.

#### **4.27.110 Suspension or revocation of license.**

A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section if the City Manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this chapter except violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

1. Upon a finding by the City Manager of a first license violation within any five (5) year period, the license shall be suspended for thirty (30) days.
2. Upon a finding by the City Manager of a second license violation within any five (5) year period, the license shall be suspended for ninety (90) days.
3. Upon a finding by the City Manager of a third license violation within any five (5) year period, the license shall be suspended for one (1) year.
4. Upon a finding by the City Manager of a fourth license violation within any five (5) year period, the license shall be revoked.

B. Notwithstanding subsection (A) of this section, a license shall be revoked if the City Manager finds that either one or both of the following conditions exists:

1. One or more of the bases for denial of a license under EGMC Section 4.27.060(A) existed at the time application was made or at any time before the license was issued.
2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

C. In the event the City Manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five (5) days of the suspension or revocation in the manner prescribed in EGMC Section 4.27.060(C). The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;

2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of EGMC Section 4.27.120, to the City Manager, within ten (10) days of the date of service of the notice; and

3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

D. A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license.

#### **4.27.120 Denial, suspension, and revocation – Appeals.**

A. Any applicant or licensee aggrieved by the decision of the City Manager in denying, suspending, or revoking a license may appeal the decision by submitting a written appeal pursuant to EGMC Chapter 1.11 from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

3. The signatures of all parties named as appellants and their official mailing addresses; and

4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted in accordance with EGMC Chapter 1.11.

C. Any suspension or revocation of a license shall be stayed during the pendency of an appeal that is properly and timely filed pursuant to this section.

#### **4.27.130 Enforcement.**

A. In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day such violation continues.

B. Any violation of this chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this chapter.

C. Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars or more than Twenty-five Thousand and no/100<sup>ths</sup> (\$25,000.00) Dollars for each day the violation continues.

D. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City.

E. In addition to criminal sanctions, civil penalties as provided in this section, and other remedies set forth in this chapter, administrative penalties of up to Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars for each violation of this chapter may be imposed against any person violating any provision of this chapter pursuant to the procedures specified in EGMC Chapter 16.18 or pursuant to any generally applicable provisions of the Elk Grove Municipal Code concerning administrative fines and penalties.

## **Chapter 4.30**

### **ADULT-RELATED ESTABLISHMENTS**

Sections:

#### **Article I. General Provisions**

4.30.000 Purposes.

4.30.005 Definitions – Generally.

4.30.010 Definitions – “Adult-related establishment.”

4.30.015 Definitions – “Bathhouse.”

4.30.020 Definitions – “Introductory service.”

4.30.025 Definitions – “Massage services.”

4.30.030 Definitions – “Escort services.”

4.30.035 Definitions – “Employed or retained by.”

4.30.050 Exemptions.

4.30.060 Hours of operation.

4.30.065 List of services.

- 4.30.070 Personnel registers.
- 4.30.075 Employment of minors.
- 4.30.080 Schools of massage.
- 4.30.085 Sanitation requirements – Massage establishments.
- 4.30.090 Sanitation requirements – Bathhouses.
- 4.30.095 Sanitation requirements – Massage technicians.
- 4.30.100 Minimum qualifications – Massage managers.
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## **Article II. Licenses and Permits**

- 4.30.200 License required.
- 4.30.205 Display of license.
- 4.30.210 Employee permits required.
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- 4.30.220 Issuance.
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## **Article I. General Provisions**

### **4.30.000 Purposes.**

There has been a proliferation throughout the region of adult-related establishments, such as escort bureaus, introductory services, public bathhouses, and similar businesses which offer patrons services or entertainment of an adult character. There has been a demonstrable relationship between high incidence of unlawful prostitution and drug-related crime and the adult-related establishments regulated by this chapter. Such businesses have been known to operate as fronts for houses of prostitution and for illegal drug-related transactions. Past regulation by the regional governments of some of these establishments, such as massage parlors, has been unsuccessful because the establishments evade the regulations by changing their names to indicate different objects or purposes from the types of businesses regulated.

A system of requiring regulatory licenses for adult-related establishments and for those persons rendering services to customers will assist in assuring illegal activities do not occur on the premises or otherwise in connection with the business within the City. If criminal activity occurs on the premises, or if other provisions of this chapter are violated, the licenses are subject to revocation. Criminal liability also exists for a violation of this chapter. These provisions will provide the Chief of Police with both preventative and investigatory tools to control illegal activity in such businesses, and will promote and protect the public health, safety and welfare.

By the definition of “adult-related establishment” contained in EGMC Section 4.30.010, it is the intent of the City Council to prevent evasion of the provisions of this chapter through the device of calling the business by a new or different name.

This chapter is enacted pursuant to the provisions of Section 51034 of the Government Code.

#### **4.30.005 Definitions – Generally.**

As used in this chapter, the terms identified by EGMC Sections 4.30.010 through 4.30.035 shall be ascribed the meanings indicated.

#### **4.30.010 Definitions – “Adult-related establishment.”**

“Adult-related establishment” means a bathhouse, escort bureau, introductory service, massage establishment, or out-call massage service as defined by this chapter. “Adult-related establishment” does not include an “adult-oriented business” as defined and regulated in EGMC Chapter 4.31.

#### **4.30.015 Definitions – “Bathhouse.”**

“Bathhouse” means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including, but not limited to, showers, saunas and hot tubs.

#### **4.30.020 Definitions – “Introductory service.”**

“Introductory service” means a business which, for pecuniary compensation, consideration, hire or reward, will help persons to meet or become acquainted with others for social purposes. For purposes of this section, “others” include personnel of the introductory service.

#### **4.30.025 Definitions – “Massage services.”**

In relation to massage services, the following terms shall be ascribed the following meanings:

A. "Massage" means any method of pressure or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external surfaces of the body with hands or with any object or appliance;

B. "Massage establishment" means an establishment whose primary business is the offering of massage in exchange for pecuniary compensation, consideration, hire or reward;

C. "Out-call massage service" means any business, not licensed as a massage establishment under the provisions of this chapter, wherein the primary function of such business is to engage in or carry on massage for pecuniary compensation, consideration, hire or reward not at a fixed location, but at a location designated by the customer or client;

D. "Massage technician" means any person who for pecuniary compensation, consideration, hire or reward, engages in the practice of massage.

#### **4.30.030 Definitions – "Escort services."**

In relation to escort services, the following terms shall be ascribed the following meanings:

A. "Escort bureau" means a business which, for pecuniary compensation, consideration, hire or reward, furnishes or offers to furnish escorts;

B. "Escort" means a person who, for pecuniary compensation, consideration, hire or reward, either escorts or accompanies others to or about social affairs, entertainment or places of amusement, or keeps company with others about any place of public resort or within any private quarters.

#### **4.30.035 Definitions – "Employed or retained by."**

"Employed or retained by" shall include:

A. Any person who is a directly paid employee of an adult-related business;

B. Any person whose association with an adult-related business is that of an independent contractor who receives payments of anything of value in exchange for any service rendered to the adult-related business or any of its customers;

C. Any person who receives a referral of customers from an adult-related business and who at any time before the referral or thereafter arranges in any way for money or any thing of value to flow to the adult-related business or any of its owners (regardless of whether the parties involved acknowledge that consideration is flowing in exchange for the referral or record such consideration in their financial records).

#### **4.30.050 Exemptions.**

This chapter shall not be applicable to or include the following:

- A. Hospitals, nursing homes, sanitariums, or persons working in any such establishments;
- B. Persons holding an unrevoked certificate to practice the healing arts under the laws of the state of California or persons working under the direction of any such persons;
- C. Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the state of California;
- D. Modeling schools maintained pursuant to standards established by the State Board of Education of the state of California; or
- E. Any recognized school of massage which:
  - 1. Teaches the theory, ethics, practice, profession and work of massage requiring a minimum of two hundred fifty (250) hours of instruction for which not more than one hundred twenty-five (125) hours of credit can be given to a student for previous experience; and
  - 2. Requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and
  - 3. Has been registered pursuant to Section 94931 of the Education Code, or, if such school is not located in California, has complied with the standards commensurate with those specified in Section 94931 of the Education Code. A "recognized school of massage," as those terms are used above, shall not include a school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class.

#### **4.30.060 Hours of operation.**

It shall be unlawful for any adult-related establishment to be operated or remain open for business between the hours of 10:00 p.m. and 8:00 a.m. of the following day.

#### **4.30.065 List of services.**

A list of the services available and the price of such services shall be posted in a clearly visible place at or near the entrance of each adult-related establishment. The services available shall be described in readily understandable language. No adult-related

establishment shall render or provide, or offer to render or provide, any service not listed in compliance with this section.

**4.30.070 Personnel registers.**

Operators of adult-related establishments shall maintain personnel registers, which shall be available for inspection by the Chief of Police at all times during regular business hours, as follows:

A. With respect to a massage establishment and an out-call massage service, a personnel register shall be maintained containing the names and employee permit numbers of each person employed or retained to perform service as a massage technician.

B. With respect to an escort or introductory service, a personnel register shall be maintained which includes the names and employee permit number of each person employed or retained as an escort or person employed or retained by the introductory service.

C. With respect to any other adult-related establishment, a personnel register shall be maintained which includes the names of all persons employed or retained on the premises to provide services, the title of the position of each such person, and, as to those persons required to possess employee permits by this chapter, their employee permit numbers.

**4.30.075 Employment of minors.**

It shall be unlawful for the operator or any other person in charge of an adult-related establishment to employ or retain any person who is under eighteen (18) years of age to perform any service on the premises of the establishment.

**4.30.080 Schools of massage.**

No massage establishment shall operate as a school of massage, as the term “recognized school of massage” is defined by EGMC Section 4.30.050(E), or shall use the facilities or premises of such a school of massage in connection with the operations of the massage establishment.

No person shall perform a massage on a member of the general public while on the premises of a school of massage, as defined by EGMC Section 4.30.050(E).

**4.30.085 Sanitation requirements – Massage establishments.**

Massage establishments shall at all times be equipped with an adequate supply of clean, sanitary towels, coverings and linens. Towels, coverings and linens shall not be



used on more than one patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in approved receptacles.

Within massage establishments, wet and dry heat rooms, steam or vapor rooms or cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Instruments for massage shall not be used on more than one patron unless they are sterilized before each use by sterilization methods approved by the Chief of Police.

#### **4.30.090 Sanitation requirements – Bathhouses.**

Within bathhouses, towels shall not be supplied to more than one patron unless such towels have first been laundered and disinfected. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower rooms and compartments, toilet rooms and pools shall be thoroughly cleaned and disinfected as needed, and at least once a day the premises are open, with a disinfectant approved by the Chief of Police. Bathtubs shall be thoroughly cleaned after each use with a disinfectant approved by the Chief of Police. All walls, ceilings, floors and other physical facilities shall be in good repair and maintained in a clean and sanitary condition.

#### **4.30.095 Sanitation requirements – Massage technicians.**

While performing services in any adult-related establishment, massage technicians shall wear garments which cover the entire body, exclusive of the head, neck, arms, legs, hands and feet, while giving a massage. Such garments shall not be transparent.

#### **4.30.100 Minimum qualifications – Massage managers.**

Each massage establishment and out-call massage service offering any services involving physical contact with patrons shall be managed by a person who possesses a diploma or certificate of graduation from a recognized school of massage, as the term “recognized school of massage” is defined by EGMC Section 4.30.050(E). It shall be unlawful for any massage establishment or out-call massage service offering such services to operate unless managed by a person possessing a diploma or certificate. Such an establishment and service shall not be deemed “managed” as required by this section unless a person possessing the required certificate or diploma having the authority and responsibility to supervise personnel employed or retained to perform services and to supervise the delivery of services is on the premises of the

establishment not less than seventy-five (75%) percent of the time the business is open for the delivery of services.

**4.30.105 Minimum qualifications – Massage technicians.**

It shall be unlawful for any massage establishment and out-call massage service to employ or retain a person to provide services as a massage technician, and unlawful for any person to work at or for such an establishment or service, unless the person possesses a diploma or certificate of graduation from a recognized school of massage, as the term “recognized school of massage” is defined by EGMC Section 4.30.050(E).

**Article II. Licenses and Permits**

**4.30.200 License required.**

It shall be unlawful for any person to operate or conduct an adult-related establishment unless under and by authority of a valid, unexpired and unrevoked special business license issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

**4.30.205 Display of license.**

Each adult-related establishment, except an out-call massage service, shall display the special business license in a conspicuous place within the establishment so that the same may be readily seen by persons entering the premises.

A person engaged in an out-call massage service who is the licensee for such service shall have the license available for inspection at all times while providing out-call massage services.

**4.30.210 Employee permits required.**

A. It shall be unlawful for any person to provide any of the following services without possessing a valid, unexpired and unrevoked employee permit issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter:

1. Act as a manager of an adult-related establishment by supervising or controlling the personnel of such an establishment or the services rendered therein;
2. Give a massage for a fee or any other form of consideration;
3. Act as an escort or a person employed or retained by an introductory service.

B. It shall be unlawful for the operator of any adult-related establishment to employ or retain a person to perform any of the above services unless such person possesses such an employee permit.

#### **4.30.215 Application.**

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit to provide services identified by EGMC Section 4.30.210 shall contain the following:

A. A list of each conviction of the applicant, plea of guilty, or plea of *nolo contendere*. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

B. Proof of the age of the applicant; and

C. With respect to a permit to perform services as a manager of a massage establishment or out-call massage service or as a massage technician, the name and address of each school of massage attended or provider of instructional services in massage which has been received, the name and address and current telephone number of the school or provider, the dates of attendance or receipt of instruction, and a copy of any certificate or diploma or other evidence of completion which the applicant has received.

#### **4.30.220 Issuance.**

A. Upon receipt of an application for an employee permit to act as a manager of an adult-related establishment, a massage technician, or an escort, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit unless he or she finds pursuant to EGMC Section 4.10.090 any of the following:

1. That the application fails to contain information required by the Chief of Police or EGMC Section 4.30.215, or is otherwise incomplete;

2. That information contained in the application is false or otherwise inaccurate;

3. That the applicant has been convicted of a crime and the time for appeal has elapsed, or when an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under Section 1203.4 of the California Penal Code; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or herself, or another, or substantially injure another; and the Chief of Police concludes that by reason of the crime or act there is a substantial risk that the applicant would not perform his or her duties as a manager,

massage technician, or escort in a law-abiding manner or in a manner which would not subject patrons to risk of harm or criminal, deceitful or otherwise unethical practices.

Notwithstanding the foregoing, an application shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under Section 4852.01 et seq., of the California Penal Code, or that the person has been convicted of a misdemeanor if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person when considering the denial of a license under Section 482(a) of the California Penal Code;

4. That the applicant is under eighteen (18) years of age; or

5. That with respect to an application for an employee permit to act as a manager of a massage establishment or out-call massage service offering services involving physical contact with patrons, or massage technician, the applicant has not graduated from a recognized school of massage, as defined by EGMC Section 4.30.050(E).

B. Notwithstanding any other provision in this chapter to the contrary, the Chief of Police may deem the requirements of subsection (A)(5) of this section and EGMC Sections 4.30.100 and 4.30.105 satisfied if he or she finds in writing that the applicant for the permit has attended not less than two hundred fifty (250) hours of instruction in massage at a school within or outside this state or in any foreign country that provides education substantially equal to or in excess of that received as a result of graduating from a recognized school of massage. Not more than one hundred twenty-five (125) hours of such two hundred fifty (250) hour instructional requirement can be waived based upon prior education or training experience.

#### **4.30.225 Revocation of permits.**

An employee permit may be revoked or suspended pursuant to EGMC Section 4.10.140 upon any of the following grounds:

A. Violation of any of the duties, requirements or prohibitions contained in this chapter;

B. Violation of any of the duties, requirements or prohibitions set forth in any administrative regulations issued pursuant to EGMC Section 4.02.085;

C. Misrepresentation of a material fact contained in the application for the permit; or

D. That since issuance or renewal of the permit the Chief of Police has acquired information supporting a finding prescribed by EGMC Section 4.30.220(A)(3) in relation to the holder of the permit.

## **Chapter 4.31**

### **ADULT-ORIENTED BUSINESSES**

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## **Article I. General Provisions**

### **4.31.000 Purpose and intent.**

It is the intent of this chapter to regulate adult-oriented businesses in order to promote the health, safety, and general welfare of the residents of the City. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or denying access by the distributors, exhibitors, and performers of adult-oriented entertainment to their intended market. In addition, the provisions of this chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

### **4.31.005 Licenses and registration required.**

A. It is a violation of this chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an adult-oriented business unless the person first obtains and continues to maintain in full force and effect a valid adult-oriented special business license issued by the Chief of Police pursuant to this chapter.

B. It is a violation of this chapter for any person who operates an adult-oriented business to employ or permit a person to work for or at the adult-oriented business who does not possess a valid adult-oriented business employee permit issued by the Chief of Police pursuant to this chapter.

C. It is a violation of this chapter for any person to obtain employment with or perform, work for or at an adult-oriented business unless the person first obtains and continues to maintain in full force and effect a valid adult-oriented business employee permit issued by the Chief of Police pursuant to this chapter. These provisions shall not apply to persons exclusively on the premises of the adult-oriented business to render only repair or maintenance services or to deliver equipment or goods to the adult-oriented business as long as such persons are not nude, semi-nude, in a state of nudity, or in a semi-nude condition.

D. It is a violation of this chapter for any person to engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of specified anatomical areas or involving specified sexual activities in an adult-oriented business unless the person first obtains and continues to maintain in full force and effect a valid adult-oriented business employee permit issued by the Chief of Police pursuant to this chapter.

#### **4.31.010 Classification.**

Adult-oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores (including adult novelty stores or adult video stores);
- C. Adult cabarets;
- D. Adult motels (including adult hotels);
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Nude model studios; and
- H. Sexual encounter centers.

### **Article II. Definitions**

#### **4.31.050 Definitions.**

The definitions contained in this section shall govern the construction of this chapter.

A. "Adult arcade" means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

1. The proportion of the business' displays that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.
2. The proportion of the business' revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.



B. "Adult bookstore" (including adult novelty store or adult video store) means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas; or

2. Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with specified sexual activities.

3. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

a. The business devotes more than twenty-five (25%) percent of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas.

b. The business devotes more than twenty-five (25%) percent of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas.

c. The retail value of merchandise that is distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas exceeds twenty-five (25%) percent of the total retail value of inventory offered in each of the following categories:

i. Books,

ii. Magazines,

iii. Video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental,

iv. Novelties and devices, and

v. On-premises viewing of images, films, and/or videos.

d. Gross revenue derived from merchandise in any category set forth in subsection (B)(3)(c) of this section exceeds twenty-five (25%) percent of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business offers or advertises merchandise that is distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas as set forth in subsection (B)(3)(c) of this section and fails to make revenue- and inventory-related business records available to the City upon twenty-four (24) hours advance notice.

C. "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course of conduct, features:

1. Persons who appear in a state of nudity or semi-nude condition; or
2. Live performances which are distinguished or characterized by an emphasis upon the exposure of specified anatomical areas or by specified sexual activities; or
3. Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.
4. The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:
  - a. The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.
  - b. The proportion of the business' revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.

D. "Adult motels" (including adult hotels) means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas; and has any of the following characteristics:

1. A sign visible from the public right-of-way which advertises the availability of the above-described photographic reproductions; or

2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

E. "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, for observation by five (5) or more patrons at any one time.

The phrase "regularly shown" shall be construed with reference to all relevant factors, including but not limited to the following:

1. The proportion of the theater's photographic reproductions that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.
2. The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.
3. The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of specified sexual activities or specified anatomical areas.

F. "Adult-oriented business" means any of the following commercial establishments where patrons are permitted or invited: an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center. An adult-oriented business does not include those businesses defined and regulated as "adult-related businesses" under EGMC Chapter 4.30.

G. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a state of nudity or semi-nude condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of specified anatomical areas or by specified sexual activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

1. The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.

2. The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of specified sexual activities or specified anatomical areas.

H. "Distinguished or characterized by an emphasis upon" means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or predominant character and theme are the depiction, description, showing, or simulation of the enumerated sexual activities or anatomical areas.

I. "Employee" means a person who performs any service on the premises of an adult-oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not such person is paid a salary, wage or other compensation by the operator of the business. "Employee" does not include a person exclusively on the premises of the adult-oriented business to render only repair or maintenance services or to deliver equipment or goods to the adult-oriented business as long as such persons are not in a state of nudity or in a semi-nude condition.

J. "Establishment of an adult-oriented business" means and includes any of the following:

1. The opening or commencement of any adult-oriented business as a new business;
2. The conversion of an existing business, whether or not an adult-oriented business, to any other adult-oriented business;
3. The addition of any adult-oriented business to any other existing adult-oriented business; or
4. The relocation of any adult-oriented business.

K. "Fabric" means cloth made by weaving or knitting natural or synthetic fibers and filaments and, for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

L. "Hotel" means a building or group of buildings containing guestrooms offering transient lodging accommodations to the general public and incidental services that are

customarily provided by a hotel, for the convenience of hotel guests, such as food service, recreational facilities, retail services, and banquet, reception and meeting rooms.

M. "Licensee" means a person in whose name a license to operate an adult-oriented business has been issued, as well as the person listed as an applicant on the application for a license.

N. "Motel" means an establishment otherwise defined as a hotel with at least twenty-five (25%) percent of all rooms having direct access to the parking areas without the necessity of persons passing through a main lobby of the building.

O. "Nude model studio" means any place where a person appears semi-nude, in a state of nudity, or displays specified anatomical areas; and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the state of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a person in a state of nudity or a semi-nude condition is available for viewing;

2. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

3. Where no more than one nude or semi-nude model is on the premises at any one time.

P. "Nudity" or "a state of nudity" means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by fabric) male genitals in a discernibly turgid state.

Q. "Permit" means an authorization issued by the City to a person in whose name a permit has been issued allowing employment in an adult-oriented business.

R. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

S. "Chief of Police" or "Chief of Police" means the Chief of Police of the City of Elk Grove or the authorized representatives thereof.

T. "Semi-nude" or "in a semi-nude condition" means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

U. "Sexual encounter center" means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a state of nudity or semi-nude condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

V. "Specified anatomical areas" means and includes the following:

1. Less than completely and opaquely covered by fabric: human genitals or pubic region; human buttocks; human anus; or the female breast below a point immediately above the top of the areola;
2. Human male genitals in a discernibly turgid state, even if completely or opaquely covered by fabric; and
3. Any device, costume, or covering that simulates any of the body parts included in subsection (V)(1) or (2) of this section.

W. "Specified criminal activity" means the following offenses within the state of California, or an offense without the state of California that would have constituted any of the following offenses if committed within the state of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under the provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, or giving away of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered.

X. "Specified sexual activities" means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

1. The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;

2. Sex acts, actual or simulated, including, but not limited to, intercourse, oral copulation, or sodomy;

3. Masturbation, actual or simulated;

4. Excretory functions as part of or in connection with any of the other activities described in subsections (X)(1) and (2) of this section.

Y. "Transfer of ownership or control of an adult-oriented business" means and includes any of the following:

1. The sale, lease, or sublease of the adult-oriented business;

2. The transfer of securities which constitute a controlling interest in the adult-oriented business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the adult-oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **Article III. Adult-Oriented Business Licenses**

#### **4.31.100 Adult-oriented business license required.**

Every person who proposes to maintain, operate, conduct, or establish an adult-oriented business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a nonrefundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council.

A. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information, including fingerprints, as to enable the Chief of Police to determine whether each applicant meets the qualifications established in this chapter.

B. If a person who wishes to operate an adult-oriented business is an individual, the person must sign the application. If a person who wishes to operate an adult-oriented business is other than an individual, each individual who has a twenty (20%) percent or greater ownership interest in the adult-oriented business must sign the application. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

C. The completed application for an adult-oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:

a. An individual, the individual shall state his or her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;

b. A partnership, the partnership shall state its complete name, address, e-mail address, if any, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any;

c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process.

If the applicant is a partnership or corporation, each partner of the partnership or each shareholder of the corporation with twenty (20%) percent or more share of the corporation shall be deemed an individual applicant and must each be qualified under this chapter.

2. If the applicant intends to operate the adult-oriented business under a name other than that of the applicant, the applicant shall register the fictitious name of the adult-oriented business with the appropriate governmental entity and show written proof of registration of the fictitious name.

3. Whether the applicant has been convicted of a specified criminal activity and, if so, the particular California statute section listed in the definition of specified criminal activity, the date, place, and jurisdiction of each.

4. Whether the applicant has ever had a license previously issued under this chapter or its predecessor, or other similar adult-oriented business ordinances from another city or county, denied, suspended or revoked, including the name and location of the adult-oriented business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or majority stockholder of a corporation that is licensed under this chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the adult-oriented business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.



5. Whether the applicant holds any other licenses under this chapter, or its predecessor, or other similar adult-oriented business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

6. The particular adult-oriented business for which the applicant is applying. An applicant must apply separately for each adult-oriented business to be operated, owned, managed, or controlled by the applicant.

7. The address to which notice of action on the application is to be mailed.

8. The location of the adult-oriented business, including a legal description of the property, street address, and telephone number(s), if any.

9. The applicant's mailing address, residential address, and e-mail address, if any.

10. A recent photograph of the individual applicant.

11. The applicant's driver's license number, Social Security number, and, for partnerships or corporation applicants, the applicant's state or federally issued tax identification number to the extent the applicant has been issued these items.

12. The names of all employees, independent contractors, and other persons who will work, be employed or perform at the adult-oriented business, who are required by this chapter to obtain an adult-oriented business employee permit.

13. A sketch or diagram showing interior configuration of the premises, including a statement of the total floor area occupied by the adult-oriented business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6") inches.

14. A certificate and straight-line drawing, prepared within thirty (30) days prior to application, depicting, without regard to intervening structures or objects, the distance from the closest exterior wall of the building or structure in which the adult-oriented business is located, to the boundary of the property on which is located a building, structure or use, or portion of the building, structure or use, described in, and within the distance specified in, Section 23.70.040 of the Zoning Code.

15. A diagram of the off-street parking areas and premises entries of the adult-oriented business and showing the location of the lighting system.

D. Every application for a license under this chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

E. The fact that an applicant possesses other types of state, city or county permits or licenses does not exempt the applicant from the requirement of obtaining an adult-oriented business license.

#### **4.31.105 Investigation and action on application.**

A. The Chief of Police shall determine whether the application contains all of the information required by the provisions of this chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with the Chief of Police as set forth herein.

B. Within three (3) business days after the Chief of Police determines that the application is complete and the required nonrefundable application fee has been submitted, the Chief of Police shall issue a temporary license to the applicant, which shall be valid for the time period during which the license application is being processed, which time period shall not exceed thirty (30) business days from the date the application has been deemed complete. A temporary license issued pursuant to this subsection shall not grant any vested rights on the holder of the temporary license.

C. Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

D. Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this chapter, and shall notify the applicant as follows:

1. If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an adult-oriented business license.

2. If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

3. The documents specified in subsections (D)(1) and (2) of this section shall be placed in the mail, first class postage prepaid, addressed to the applicant at the address specified in the application for receipt of the determination under this chapter. All notices given hereunder shall be deemed given upon the date they are deposited in the mail or the date upon which personal service is provided.

E. The Chief of Police shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

1. That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to, the locational requirement set forth in the City's zoning code, the provisions of this chapter, and the Building, Health, Housing and Fire codes of the City;

2. That the applicant has been convicted of a specified criminal activity, except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit and the longest of the following time periods has passed:

- a. Five (5) years from date of the conviction; or
- b. Five (5) years from release from confinement; or
- c. Five (5) years from formal release from probation period; or
- d. Five (5) years from formal release from parole;

3. That the applicant has knowingly made a material misrepresentation in the application;

4. That the applicant or any operator has had a license for an adult-oriented business revoked for cause by this City or any other city or county within the last five (5) years except as provided in this chapter;

5. That the applicant is not at least eighteen (18) years of age;

6. That the applicant has not paid the required fee.

F. The license, if granted, shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding

license, the City Manager shall transmit to the licensee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the license to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding license. Notwithstanding EGMC Section 4.10.060, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine whether the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial license. The Chief of Police shall extend the term of the immediately preceding license during the period of any investigation or examination required in order to determine whether the license should be renewed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for initial licenses.

G. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult-oriented business and the single classification of adult-oriented business as set forth herein, for which the license is issued.

H. All licenses shall be posted in a conspicuous place at or near the entrance to the adult-oriented business so that they may be easily read at any time by all persons entering the adult-oriented business.

I. Within thirty (30) days of any change in the information originally submitted with the license application, all licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this chapter. Failure to submit such changes shall be grounds for suspension of the adult-oriented business license.

J. Within thirty (30) days of any change in employee hiring or status, all licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this chapter. Failure to submit such changes shall be grounds for suspension of the adult-oriented business license.

K. If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after its receipt the applicant may begin operating the adult-oriented business for the single classification of adult-oriented business as set forth herein, for which the license was sought, subject to strict compliance with the provisions of this chapter for a period of twelve (12) months subject

to the renewal provisions as set forth in this chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant to the terms of this chapter even if more than thirty (30) days have elapsed since the receipt of a completed application.

#### **4.31.110 Transfer of adult-oriented business licenses.**

- A. It is a violation of this chapter for a licensee to operate an adult-oriented business under the authority of an adult-oriented business license at any place other than the address of the adult-oriented business stated in the application upon which the license was issued.
- B. It is a violation of this chapter for a licensee to transfer ownership or control of an adult-oriented business license to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this chapter.
- C. It is a violation of this chapter for a licensee to transfer an adult-oriented business license when the Chief of Police has notified the licensee that the license has been suspended or revoked or that such action is pending.
- D. Any attempt to transfer a license either directly or indirectly in violation of this chapter is void, and the license shall be deemed revoked.

### **Article IV. Adult-Oriented Business Employee Permits**

#### **4.31.200 Employee permit required.**

- A. No person shall engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of specified anatomical areas or involving specified sexual activities in an adult-oriented business without a valid adult-oriented business employee permit issued by the Chief of Police.
- B. All employees of an adult-oriented business shall have a valid adult-oriented business employee permit issued by the Chief of Police.
- C. Before any applicant may be issued an adult-oriented business employee permit, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:
  - 1. The applicant's legal name and any other name including "stage" names or aliases used by the applicant;

2. Age, date, and place of birth;
3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. Date, issuing state and number of driver's license or other identification card information, if applicable;
7. Social Security number; and
8. Satisfactory written proof that the individual is at least eighteen (18) years of age.

D. Attached to the application form shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
2. A statement detailing the permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously obtained or is seeking to obtain an adult-oriented business employee permit in this City or any other county, city, state, or country, and whether such applicant has ever had a license, permit, or authorization to do business in an adult-oriented business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
3. A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, of a specified criminal activity as defined in this chapter and, if so, the particular California statute section listed in the definition of specified criminal activity, and the date, place and jurisdiction of each conviction.

E. Every application for a permit under this chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

F. Every application for an adult-oriented business employee permit, whether for a new permit or for a renewal of an existing permit, shall be accompanied by a nonrefundable application, investigation and permit fee as set forth in the schedule of fees established from time to time by the City Council.

G. The fact that an applicant possesses other types of state, City or county permits or licenses does not exempt the applicant for the requirement of obtaining an adult-oriented business employee permit.

#### **4.31.205 Investigation and action on application.**

A. Upon receipt of an application for an adult-oriented business employee permit and the required nonrefundable application, investigation, and licensing fee, the Chief of Police shall issue a fifteen (15) day temporary permit to the applicant.

B. The Chief of Police shall determine whether the application contains all of the information required by the provisions of this chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with the Chief of Police as set forth herein.

C. Within fifteen (15) business days after the issuance of the temporary permit, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

1. If the application is approved, the Chief of Police will write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an adult-oriented business employee permit.

2. If the application is denied, the Chief of Police will write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

3. The documents specified in subsections (C)(1) and (2) of this section shall be placed in the mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the mail or the date upon which personal service is provided.

D. The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

1. That the applicant has been convicted of a specific criminal activity, except the Chief of Police shall issue a permit to any person convicted of any of the crimes described above if the person is otherwise qualified for a permit; and the longest of the following time periods has passed:

- a. Five (5) years from date of the conviction; or
- b. Five (5) years from release from confinement; or
- c. Five (5) years from formal release from probation period; or
- d. Five (5) years from formal release from parole.

2. That the applicant has knowingly made a material misrepresentation in the application.

3. That the applicant has had an adult-oriented business employee permit revoked for cause by this City or any other city or county within the last five (5) years except as provided in this chapter.

4. That the applicant is not at least eighteen (18) years of age.

5. That the applicant has not paid the required fee.

E. The permit, if granted, shall expire one (1) year from the date of issuance. Not later than forty-five (45) days prior to expiration of the term of the immediately preceding permit, the City Manager shall transmit to the permittee by mail an application for renewal. The application for renewal shall be in such form and include such information as is prescribed and required by the Chief of Police, but shall include a renewal form provided by the City, the required fee, and a copy of the permit to be renewed. The sole purpose of the renewal application is to update the information provided by the applicant on the initial application.

The application for renewal shall be filed with the City Manager not later than the date of expiration of the term of the immediately preceding permit. Notwithstanding EGMC Section 4.10.085, the Chief of Police shall perform such investigation and examination of the applicant as he or she deems appropriate to determine the standards for renewal are satisfied. In considering such renewal, the Chief of Police shall use the same standards as used for issuance of an initial permit. The Chief of Police shall extend the term of the immediately preceding permit during the period of any investigation or examination required in order to determine whether the permit should be renewed. The



Chief of Police shall act upon applications for permit renewal as provided herein for applications for initial permits.

F. The permit, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an adult-oriented business employee permit with an identification card containing the name, address, photograph, and permit number of the permit.

G. Both the permit and identification card shall be available for inspection at all times during which the permittee is on the premises of an adult-oriented business.

H. If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin employment at an adult-oriented business, subject to strict compliance with the provisions of this chapter for a period of twelve (12) months subject to the renewal provisions as set forth in this chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant to the terms of this chapter even if more than thirty (30) days have elapsed since the receipt of a completed application.

#### **4.31.210 Transfer of employee permit.**

A permit holder shall not transfer ownership or control of an adult-oriented business employee permit.

### **Article V. Denial, Suspension, and Revocation of License or Permit**

#### **4.31.300 Denial of license or permit.**

When the Chief of Police denies application for a license or permit or the application for a renewal of a license or permit, other than due to the failure to pay the required fees, the applicant shall not be issued a license or permit for one (1) year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial has been corrected or abated, the applicant shall be granted a license or permit if at least ninety (90) days have elapsed since the date denial became final and the applicant is otherwise qualified to obtain a license or permit.

#### **4.31.305 Suspension or revocation of license or permit.**

A. A licensee or permittee may be subject to suspension or revocation of his or her license or permit, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes arising from the acts

or omissions of the licensee or permittee, or an employee, agent, partner, director, stockholder, or manager of an adult-oriented business:

1. The licensee or permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a license or permit, or in any report or record required to be filed with the City.

2. The licensee or permittee, employee, agent, partner, director, stockholder, or manager of an adult-oriented business has engaged in or knowingly allowed or permitted, or has failed to make a reasonable effort to prevent, the occurrence of any of the following on the premises of the adult-oriented business:

a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

b. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

c. Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

d. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Section 647(b) of the California Penal Code.

e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.f. Any conduct prohibited by this chapter.

3. The licensee or permittee failed to abide by any lawful condition previously imposed by an authorized City official.

4. The licensee or permittee failed to abide by any applicable provision of this chapter.

B. In accordance with the provisions of this chapter, if the Chief of Police finds and determines that there are grounds for action, the Chief of Police shall propose one of the following:

1. A warning;

2. Suspension of the license or permit for a specified period not to exceed six (6) months;

3. Revocation of the license or permit.

4. The Chief of Police shall propose the revocation of a license or permit if it has been suspended within the proceeding twelve (12) months.

C. The revocation of a license or permit shall continue for one (1) year, and the licensee or permittee shall not be issued an adult-oriented business license or permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a new license or permit if at least ninety (90) days have elapsed since the date the revocation became effective and the applicant is otherwise qualified for a license or permit.

#### **4.31.306 Suspension or revocation hearing.**

On determining that grounds for license or permit revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the licensee or permittee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager, and the grounds upon which the hearing is based, the pertinent code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage prepaid, to the last known address of the licensee or permittee, or shall be delivered to the licensee or permittee personally, at least ten (10) business days prior to the hearing date. At the hearing, all parties shall have a right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this chapter may be continued for a reasonable time for the convenience of a party or witness. Notice of the Hearing Authority's decision shall be mailed to the applicant or licensee or permittee no later than seven (7) days after the close of the hearing. If the Hearing Authority determines that grounds for revocation or suspension exist, the Hearing Authority shall include in its written decision any one or more of the actions listed in EGMC Section 4.31.305(B) to be effective within fourteen (14) days of the hearing.

#### **4.31.310 Appeal.**

A. All decisions of the Chief of Police and/or the Hearing Authority to issue, renew, deny, suspend or revoke a license or permit are final within thirty (30) days. After denial of an application, renewal, or a suspension or revocation, the applicant or licensee or permittee may seek prompt judicial review of such decision in any court of competent jurisdiction as provided by law, including judicial review pursuant to Section 1094.8 of the California Code of Civil Procedure. Notwithstanding the applicant's or licensee's or permittee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant, licensee, or permittee, within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory

and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

B. If, upon request, the City files such action seeking judicial review or the aggrieved applicant, licensee or permittee files the action, the City's revocation, suspension, or denial of renewal application will be stayed pending a judicial decision on the merits by a court of competent jurisdiction.

C. If the City denies an initial application of a license or permit and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such action, the City shall issue a temporary license or permit if the court has not rendered a decision on the merits within the earlier of twenty (20) days after the matter is submitted to the court or fifty (50) days of the filing of the action. This temporary license or permit shall remain in effect only until the court in which the action is pending renders its decision on the merits as to the propriety of the denial.

#### **4.31.315 Confidentiality.**

The City deems confidential license and permit applications required by this chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the applications or the information contained therein.

### **Article VI. Development and Performance Standards**

#### **4.31.400 Prohibition against minors.**

It shall be unlawful for any licensee, operator, or other person in charge of any adult-oriented business to permit to enter, or remain within, the adult-oriented business any person who is not at least eighteen (18) years of age or to provide any service for which this chapter requires a license to any person who is not at least eighteen (18) years of age.

#### **4.31.405 Concealing specified activities and anatomical areas from public view.**

No adult-oriented business shall be operated in any manner that permits the observation of any material or activities depicting or describing specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the

premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

#### **4.31.410 Posting notices relating to minors.**

The building entrance to an adult-oriented business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Such notice shall be constructed and posted to the satisfaction of the Planning Director or his or her designee.

#### **4.31.415 Indoor areas open to view by management.**

All indoor areas of the adult-oriented business where patrons or members of the public are permitted, excluding rest rooms and nonpublic areas of adult motels, shall be open to view by management at all times.

#### **4.31.420 Building requirements.**

The premises and grounds of all adult-oriented businesses shall comply with the following:

A. Maximum occupancy load, fire exits, aisles, parking and fire equipment shall be regulated, designed and provided in accordance with the Cosumnes Community Services District Fire Department and building regulations and standards adopted by the City.

B. The premises within which the adult-oriented business is located shall provide sufficient sound-absorbing insulation so that noise generated inside the premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

C. All interior areas of the adult-oriented business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

1. Adult bookstores: twenty (20 fc) foot-candles;

2. Adult theaters, adult motion picture theaters and adult cabarets: five (5 fc) foot-candles (except during performances, at which times lighting shall be at least one and one quarter (1.25 fc) foot-candles);

3. Adult arcades: ten (10 fc) foot-candles;

4. Adult motels: twenty (20 fc) foot-candles (in public areas);

5. Nude model studios: twenty (20 fc) foot-candles.

D. All off-street parking areas and premises entries of the adult-oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of at least one (1 fc) foot-candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the adult-oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

E. The exterior of the adult-oriented business shall be equipped with a security system that visually records and monitors all off-street parking areas provided for the adult-oriented business during all times that the business is open or occupied for business.

1. The surveillance equipment utilized shall provide continuous recording for at least a twenty-four (24) hour period, with all recording maintained for a minimum of seventy-two (72) hours.

2. Immediately upon request, the surveillance recording for all or any portion of the previous seventy-two (72) hour period shall be made available to the Chief of Police, or his or her designated representative. Such recordings shall be utilized only for purposes of investigation of an alleged violation of a local, state or federal law, or the enforcement thereof. Except as necessary to enforce a local, state or federal law, the City deems confidential the surveillance recordings required by this chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the surveillance recordings or the information contained therein.

3. Signs shall be posted in the parking area, near the entrances to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance.

F. The exterior portions of the building shall be painted in a single achromatic color unless the adult-oriented business is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial center, including the exterior portion of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center. Nothing in this provision shall be construed to require the painting of an otherwise unpainted exterior portion of an adult-oriented business.

G. No exterior signage shall contain photographs, silhouettes, drawings, images or pictorial representations in any manner depicting or making linguistic reference to nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity.

#### **4.31.425 Hours of operations.**

An adult-oriented business shall be open for business only between the hours of 10:00 a.m. and 12:00 a.m./midnight on any particular day.

#### **4.31.430 Security guards.**

Adult-oriented businesses shall employ off-duty law enforcement officers or security guards in order to maintain the public peace and safety, based upon the following standards:

A. Adult-oriented businesses shall provide at least one officer or security guard at all times while the business is open. If the occupancy limit of the adult-oriented business is greater than thirty-five (35) persons, an additional officer or security guard shall be on duty.

B. Officers or security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Officers and security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as an officer or security guard as required by applicable provisions of state law. No officer or security guard required pursuant to this chapter shall act as a door person, ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

C. Officers and security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this chapter shall be maintained on the premises and shall be available for inspection by law enforcement personnel at all times during regular business hours.

#### **4.31.435 Register and permit number of employees.**

Every licensee of an adult-oriented business that provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a register of all past and current persons so performing at the adult-oriented business and their permit numbers. Such register shall be available for inspection during regular business hours by any Police Officer of the City.

#### **4.31.440 Inspection.**

A. When the Chief of Police, the Planning Director, and/or Code Enforcement Officers have reasonable cause to believe that violations of this title and/or other provisions of

the zoning code are occurring on the premises where an adult-oriented business is operating, they, and/or their authorized representatives, may conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within the premises of the adult-oriented business to the extent allowed by law and during the business hours of the adult-oriented business.

B. It is a violation of this chapter for a person who operates an adult-oriented business or that person's agent or employee to refuse to permit such lawful inspection of the adult-oriented business at any time it is open for business.

#### **4.31.445 Restroom facilities.**

The adult-oriented business shall provide and maintain separate restroom facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. Female patrons and employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any adult material as defined in EGMC Section 4.31.050(B)(1) and (2). Restrooms shall not contain television monitors or other motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an adult-oriented business which deals exclusively with the sale or rental of adult material which is not used or consumed on the premises, such as an adult bookstore or adult video store, and which does not provide restroom facilities to its patrons or the general public.

#### **4.31.450 Special regulations – Live entertainment.**

The following additional requirements shall pertain to adult-oriented businesses providing live entertainment distinguished or characterized by the depiction, description, showing or simulation of specified anatomical areas or involving specified sexual activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.

A. No person shall perform live entertainment for patrons of an adult-oriented business except upon a stage at least eighteen (18") inches above the level of the floor which is separated by a distance of at least six (6'0") feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30") inches in height shall be maintained establishing the separations between performers and patrons required by this chapter. "Performer" shall mean any person who is an employee or independent contractor of the adult-oriented business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an adult-oriented business.



B. The adult-oriented business shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.

C. The adult-oriented business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

D. The adult-oriented business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the adult-oriented business shall provide a minimum three (3'0") foot wide aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers.

E. No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after performances by such performer. This subsection shall only apply to physical contact anywhere on or within the premises of the adult-oriented business, including off-street parking areas.

F. No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

G. No owner or other person with managerial control over an adult-oriented business shall permit any person on the premises of the adult-oriented business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This subsection may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

#### **4.31.455 Special regulations – Adult motels.**

A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel.

B. It is a violation of this chapter for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an adult-oriented business license to rent or subrent the same sleeping room to another person more than two (2) times in a period of time that is less than ten (10) hours.

C. For purposes of subsections (A) and (B) of this section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

#### **4.31.460 Special regulations – Films, videos or viewing rooms.**

A person who operates or causes to be operated an adult-oriented business, including an adult arcade and other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150ft<sup>2</sup>) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

A. Upon application for an adult-oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager’s station may not exceed thirty-two (32ft<sup>2</sup>) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6”) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

B. No alteration in the configuration or location of a manager’s station may be made without the prior written approval of the Chief of Police.

C. It is the duty of the licensee of the adult-oriented business to ensure that at least one (1) properly permitted employee is on duty and situated in each manager’s station at all times that any patron is present inside the adult-oriented business.

D. The interior of the adult-oriented business shall be configured in such a manner that there is an unobstructed view from a manager’s station of every area of the adult-oriented business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the adult-oriented business has two (2) or more designated manager’s stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the adult-oriented business to which any patron is permitted access for any

purpose from at least one (1) of the manager's stations. The view required by this section must be by direct line of sight from the manager's station.

E. It shall be the duty of the licensee to ensure that the view area specified in this section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

F. It shall be the duty of the licensee to ensure that no patron is permitted access to any area of the adult-oriented business which has been designated as an area in which patrons will not be permitted pursuant to subsection (A) of this section.

G. No viewing room may be occupied by more than one (1) person at any time.

H. No viewing room shall have any door, curtain, shutter, or any other device blocking or capable of blocking, wholly or partially, the entrance to the viewing booth.

I. The adult-oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5 fc) foot-candles as measured at the floor level.

J. It shall be the duty of the licensee to ensure that the illumination required by this section is maintained at all times that any patron is present in the premises.

K. No openings of any kind shall exist between viewing rooms or booths.

L. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

M. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

N. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

O. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.

P. The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.

Q. Customers, patrons, or visitors shall not be allowed to loiter in the vicinity of any such video booths, or remain in the common area of such adult-oriented business, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

R. It is a violation of this chapter for a person having a duty under this section to knowingly fail to fulfill that duty.

**4.31.465 Special regulations – Nude model studios.**

A. A nude model studio shall not employ any person under the age of eighteen (18) years.

B. It is a violation of this chapter for a person under the age of eighteen (18) years to appear semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

C. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**4.31.470 Special regulations – Public nudity.**

A. It is a violation of this chapter for a person knowingly and intentionally, in a public area of an adult-oriented business (except a restroom), to appear in a state of nudity;

B. It is a violation of this chapter for a person knowingly and intentionally, in an adult-oriented business, to engage in or perform the following specified sexual activities:

1. Actual sex acts, normal or perverted, consisting of intercourse, oral copulation or sodomy;

2. Actual masturbation; and/or

3. Excretory functions as part of or in connection with any of the activities described in subsections (B)(1) or (2) of this section or as part of or in connection with the fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast.

C. It is a violation of this chapter for a person knowingly or intentionally, in a public area of an adult-oriented business, to appear in a semi-nude condition unless the person is an employee or performer who, while semi-nude, is upon a stage at least eighteen (18") inches above the level of the floor which is separated by a distance of at least six (6'0") feet from the nearest areas occupied by patrons.

D. It is a violation of this chapter for an employee or performer, while semi-nude in an adult-oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee or performer in an adult-oriented business.

E. It is a violation of this chapter for an employee or performer, in an adult-oriented business, while semi-nude, to knowingly and intentionally touch a patron or customer or the clothing of a patron or customer.

#### **4.31.475 Prohibition – Sexual encounter centers.**

A sexual encounter center is not a permitted use.

### **Article VII. Enforcement**

#### **4.31.500 Each day separate offense.**

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and shall be punished accordingly.

#### **4.31.505 Public nuisance.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the Elk Grove Municipal Code.

#### **4.31.510 Infractions.**

Any person who violates, causes, or permits another person to violate any provision of this chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice (2) convicted of an infraction for repeat violations of the same provision within a one (1) year period may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision since, rather than simply a violation of a provisions of this chapter, such repeat violations evidence a disregard of municipal authority. Any person convicted of a misdemeanor shall be subject to punishment by fine or imprisonment to the maximum permitted by state law. Pursuant to Section 36900(a) of the Government Code, the City Attorney may prosecute these violations in the name of the people of the state of California.

#### **4.31.515 Civil injunction.**

The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause for injunctive relief.

#### **4.31.520 Administrative remedies.**

In addition to the remedies set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth in the Elk Grove Municipal Code.

#### **4.31.525 Revocation of license.**

In addition to the remedies set forth above, violation of the provisions of this chapter constitutes grounds for the revocation of an adult-oriented business license and/or adult-oriented business employee permit.

### **Chapter 4.35**

#### **OUTDOOR FESTIVALS**

Sections:

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## **Article I. General Provisions and Requirements**

### **4.35.000 Purposes.**

In this state and elsewhere, outdoor festivals have been promoted and have attracted large numbers of persons, sometimes exceeding one hundred thousand (100,000). Occurrences at those outdoor festivals already held include the stealing of automobiles, abandonment of automobiles stolen elsewhere, totally unmanageable traffic congestion, slaughtering of cattle and other animals on adjoining property without permission of the owners thereof, unauthorized destruction of property, scattering of trash, garbage, and other debris on adjoining property, overnight camping at random locations, collision of automobiles with persons sleeping on the ground, and, generally, the commission of serious crimes with impunity due to the inability of police to patrol the area.

Such festivals, with their attendant large crowds, create serious health and safety risks for persons attending and the general public thereafter unless adequate sanitary facilities, drinking water supplies, lighting, medical services, vehicular parking areas, supervision, and other services and guarantees are provided.

The regulatory provisions of this chapter are necessary to ensure that outdoor festivals are held only at suitable places and are subject to reasonable conditions for the protection of the public health, safety, and welfare.

### **4.35.005 City Manager.**

The City Manager is charged with the responsibility of administering the regulations imposed by this chapter, and exercising the authority conferred thereby. Such authority shall include the power and duty to issue special business licenses authorizing outdoor festivals, promulgate administrative regulations, and otherwise perform the duties and exercise the authorities conferred herein.

To these ends, the City Manager shall be vested with the same powers and authorities in relation to outdoor festivals and the issuance and administration of special business



licenses therefor as are vested in the Chief of Police under EGMC 4.02.070, 4.02.085, 4.02.100 and 4.02.105; and EGMC 4.10.000 through 4.10.155. Any reference to the "Chief of Police" shall be deemed to be a reference to the City Manager in relation to outdoor festivals.

#### **4.35.010 Definitions – Generally.**

As used in this chapter, the terms contained in EGMC 4.35.015 through 4.35.025 shall be ascribed the meanings contained therein, unless the context indicates otherwise.

#### **4.35.015 Definitions – "Automobile parking space."**

"Automobile parking space" shall mean any maintained space, not less than one hundred eighty (180ft<sup>2</sup>) square feet in area nor less than nine (9'0") feet wide at any place, on or contiguous to the land on which the outdoor festival is conducted, and so located and arranged as to permit the parking of an average-size six (6) passenger automobile.

#### **4.35.020 Definitions – "Outdoor festival."**

"Outdoor festival" shall mean any outdoor gathering of more than five hundred (500) persons for the purpose of participating in or attending a dance, music carnival, "rock" festival, or like musical activity at which vocal or instrumental or both vocal and instrumental music is provided by professional or amateur performers or by prerecorded means, held at any place other than in a permanent building, stadium or like permanent installation which has been constructed or customarily used for the purpose of housing such activities, and to which gathering members of the public are invited or admitted with or without the payment of admission charges in any form.

#### **4.35.025 Definitions – "Sponsors and promoters."**

"Sponsors and promoters" shall mean all persons and business entities having a direct financial interest in the proceeds to be derived from the outdoor festival, whether such proceeds arise from ticket sales, sales of film, radio, television, or sound recording rights, or otherwise.

#### **4.35.030 Landowner's consent.**

It shall be unlawful for any person to sponsor, conduct, operate, promote or advertise an outdoor festival unless the owner or owners of the land upon which the festival is or would be conducted have consented to the use thereof for such purposes. If the land is not solely owned by the person or persons sponsoring, conducting, operating, promoting or advertising the festival, such consent shall be evidenced by a written instrument containing the notarized signatures of all record owners.

#### **4.35.035 Sponsor responsibilities.**

Each person to whom a special business license required by Article II of this chapter is issued shall be responsible as licensee and at the sole cost and expense thereof for provision of those facilities, services, resources and guarantees required by EGMC 4.35.040 through 4.35.105.

#### **4.35.040 Sponsor responsibilities – Water.**

The licensee shall provide drinking water of the quantity, quality, and from a source approved by the City Manager. Drinking fountains shall be provided as follows:

- A. One (1) drinking fountain for the first one hundred (100) persons;
- B. Two (2) drinking fountains for more than one hundred (100) but less than five hundred (500) persons; and
- C. One (1) additional drinking fountain for each additional five hundred (500) persons or fraction thereof.

#### **4.35.045 Sponsor responsibilities – Sanitary facilities.**

The licensee shall provide sanitary facilities as follows: at least one (1) water closet and one (1) urinal, or in lieu thereof two (2) patented chemical toilets, for every two hundred (200) males, and at least one (1) water closet or patented chemical toilet for every one hundred (100) females, unless the City Manager finds that a lesser number is sufficient, in which case he or she shall designate each number. If both sexes are admitted to any sanitary facility, for purposes of determining the required quantity of facilities, the persons attending the outdoor festival shall be assumed to be equally divided by sex. Prior to the commencement of the outdoor festival, the City Manager shall inspect the sanitary facilities with regard to adequacy of quantity, functioning, and plans for periodic removal of wastes therefrom, and shall approve the sanitary facilities only if they meet applicable health standards. While any premises are being prepared for use for an outdoor festival or for parking or other uses incidental thereto, the licensee shall provide on the premises one (1) patented chemical toilet for each twenty (20) persons or fractional part thereof working at the job site. Every patented chemical toilet installed in accordance with this section shall be maintained and operated in accordance with the rules and regulations approved by the City Manager.

#### **4.35.050 Sponsor responsibilities – Automobile parking spaces.**

On all premises on which an outdoor festival is conducted, or contiguous thereto and under the control of the applicant, in addition to those ways described in EGMC Section 4.35.085, there shall be automobile parking spaces equal in number to one-fourth (0.25)

of the number of persons which the license permits to attend the outdoor festival, unless the Public Works Director finds that a lesser number of parking spaces is sufficient, in which case the licensee shall provide the lesser number of spaces. Such automobile parking spaces shall be graded, plainly and individually marked, and separated by a physical barrier from the area where patrons will watch the performances. At all times between two (2) hours before the commencement of the outdoor festival and two (2) hours after its termination, the licensee shall provide parking attendants at all entrances and exits to the parking area within the area.

#### **4.35.055 Sponsor responsibilities – Security personnel.**

At any outdoor festival, one (1) off-duty law enforcement officer or uniformed security guard for each two hundred (200) persons which the license permits to attend, whether such permissible attendance is present or not, shall be in constant attendance during the entire time the outdoor festival is in progress. Each officer or security guard shall be approved by the Chief of Police or shall be provided by a private patrol operator whose name and address has been stated in the application and who is licensed pursuant to Division 3, Chapter 11 of the Business and Professions Code. The Chief of Police shall approve any security guard if the guard meets the qualifications stated in Sections 7526 and 7526.3 of the Business and Professions Code. The officers and security guards shall devote their entire attention and time to keeping order and enforcing all applicable statutes and ordinances, including this chapter.

#### **4.35.060 Sponsor responsibilities – Fire protection.**

The licensee shall provide such fire protection measures and equipment as the Chief of the Cosumnes Community Services District Fire Department finds reasonably necessary to provide fire protection to the immediate and adjoining premises and to persons participating in and attending the outdoor festival.

#### **4.35.065 Sponsor responsibilities – Lighting equipment.**

If the hours during which the outdoor festival can be held as provided in the license are such that any portion thereof is between sunset of one (1) day and sunrise of the following day, or if the license permits any participant or person in attendance to remain overnight, the licensee shall provide such lighting, including light standards and electrical switches, and such power supply as the Chief of Police and Public Works Director find necessary for the public safety and welfare.

#### **4.35.070 Sponsor responsibilities – Sound levels.**

The licensee shall propose reasonable limits on sound emanating from the festival grounds into adjoining areas with resident homes or businesses. At the option of the

Chief of Police, the licensee shall provide up to three (3) sound monitoring locations at the edge of the property where the outdoor festival is to be conducted. The monitoring locations shall be equipped to measure the decibels of sound emanating from the festival grounds and, at the option of the Chief of Police, may be monitored by City personnel to assure compliance with the sound level limits set forth in the permit.

**4.35.075 Sponsor responsibilities – Garbage.**

The licensee shall provide solid waste receptacles to receive solid wastes at a ratio of one (1 yd<sup>3</sup>) cubic yard of available receptacle space for each two hundred fifty (250) persons which the license permits to attend the outdoor festival.

All solid waste receptacles shall be serviced once (1) every twenty-four (24) hours during the festival. Within seventy-two (72) hours after the conclusion of an outdoor festival, the licensee shall clean the premises, including contiguous public roads, ways, and easements, removing all trash, garbage, and debris therefrom, which matter would not have been deposited therein had not the outdoor festival occurred.

**4.35.080 Sponsor responsibilities – Emergency communications.**

At all times during the conduct of an outdoor festival, the licensee shall maintain such emergency communications systems as the Chief of the Cosumnes Community Services District Fire Department and Chief of Police find reasonably necessary for fire and police protection.

**4.35.085 Sponsor responsibilities – Access ways.**

The licensee shall provide all exterior and interior access ways which the Chief of Police and Public Works Director find necessary for the use of those attending the outdoor festival. All such access ways shall be clearly marked and delineated by means of curbs or temporary buffers on the ground.

**4.35.090 Sponsor responsibilities – Dust.**

The licensee shall use such methods of dust control as are approved by the City Manager. The City Manager shall approve such methods if he finds that such methods will prevent the arising of dust to an extent which may endanger public health and safety.

**4.35.095 Sponsor responsibilities – Food.**

In selling, preparing, delivering, or serving food or beverages or both, all persons proposed by the licensee to sell food shall comply with the California Restaurant Act, Division 21, Chapter 11 (beginning with Section 28600) of the California Health and Safety Code.

#### **4.35.100 Sponsor responsibilities – Damage reimbursement.**

The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that they will reimburse all owners and occupants of property adjoining the subject premises for any and all loss, injury, or damages to such owners or occupants or to their property caused by the licensee, by the owner of the subject premises, or by any other person attending the outdoor festival, which damage would not have occurred had the outdoor festival not been held. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the licensee or owner of the subject premises may be liable because of the above-required agreement. The bond shall be prepared by a corporate bonding company authorized to do business within the state of California by the Department of Insurance, and shall be in the amount of not less than Fifty Thousand and no/100<sup>ths</sup> (\$50,000.00) Dollars, or Ten and no/100<sup>ths</sup> (\$10.00) Dollars per person permitted by the license to attend the outdoor festival, whichever is more.

#### **4.35.105 Sponsor responsibilities – Clean-up.**

The licensee and owner or owners of the premises upon which the outdoor festival would be held shall sign a unilateral written contract promising that, within seventy-two (72) hours after the conclusion of the outdoor festival, they will clean up the premises, including contiguous public roads, ways, and easements, and remove all debris, garbage, trash, litter, and other waste matter from, in, and around the premises. Accompanying and securing this agreement shall be a surety bond in favor of the City of Elk Grove and all persons to whom the applicant may be liable because of the above-required agreement prepared by a corporate bonding company authorized to do business in the state of California by the Department of Insurance, obligating the licensee and owner for all costs necessitated to clean up the premises and to remove debris, garbage, trash, litter, or other waste matter from, in, or around the premises. Such surety bond shall be in the amount of not less than Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars.

#### **4.35.110 Limitation upon attendance.**

Adequate facilities, services and accommodations for those in attendance of an outdoor festival and required to otherwise protect the public peace, health, safety and welfare necessitate a planned limit upon the volume of potential attendance and the establishment of means to ensure that the volume limit is not exceeded.

The licensee shall provide such facilities on the premises where a festival is to be conducted and such personnel as the Chief of Police deems necessary to effectively

control the number of persons in attendance as required in order to ensure that the limit for which the special business license is issued is not exceeded.

The licensee shall not admit to the outdoor festival, and shall prevent the entrance thereto of, any person who does not possess a ticket, except a peace officer or other public officer in the performance of his duty. Admission to an outdoor festival shall be by ticket only. The licensee shall not sell, give, or otherwise distribute or cause to be distributed a greater number of tickets than the number of persons the license permits to attend. The licensee shall not admit any person to an outdoor festival if such admission would result in a greater number of persons present than is permitted by the license.

The provisions of this section shall not be construed to require that tickets be sold for money as distinguished from given away or exchanged for some other consideration. Nor shall the provisions of this section be construed to require the persons desiring to attend to identify themselves either as a condition of receiving a ticket or of admission.

#### **4.35.115 Conduct prohibited.**

The attendant harm and danger caused by large numbers of persons who are under the influence of intoxicating liquor or prohibited drugs necessitate the following restrictions.

No person shall, nor shall any licensee permit any person to enter, be, or remain on any part of the premises on which an outdoor festival is being conducted which such person is in possession of, consuming, using, or under the influence of any alcoholic beverage or legally proscribed dangerous drugs or narcotics.

#### **4.35.120 Advertising.**

No person shall advertise or announce by any means or medium, including, but without limitation to, posters, pamphlets, handbills, newspaper, radio or television, the holding of an outdoor festival prior to the granting of a special business license permitting such outdoor festival.

Any and all such advertising shall contain reference to the fact that attendance is prohibited without possession of a ticket or other entitlement to attend, and the maximum number of persons permitted by the license to attend.

#### **4.35.125 Days and hours.**

The licensee shall operate the outdoor festival only on those days and during those hours specified in the special business license.

#### **4.35.130 Termination of festival.**

A. During the conduct of an outdoor festival for which a special business license has been issued under the provisions of EGMC Chapter 4.10 and this chapter, the Chief of Police shall be empowered to interrupt and terminate the festival, order the cessation thereof, and order all persons in attendance to disburse if he or she finds any of the following:

1. That the actual attendance at the festival exceeds the maximum attendance authorized by the license; or
2. That violations of EGMC Section 4.35.115 are occurring in such volume or under such circumstances that available law enforcement and security resources are inadequate to effectively enforce the prohibitions of that section; or
3. That any service on the site of the festival required by those in attendance is insufficient, and the insufficiency endangers the health, safety or welfare of those in attendance; or
4. That conduct violating the penal laws of the state of California is occurring in such volume or under such circumstances that law enforcement and security resources are insufficient to effectively prevent such violations; or
5. That the decibel level of sound intruding into neighboring properties exceeds the standards set by the license.

B. It shall be unlawful for any person to violate an order issued by the Chief of Police under the authority conferred by this section.

## **Article II. Special Business License**

#### **4.35.205 License required.**

No person shall sponsor, conduct, promote, advertise or sell or furnish tickets or other authority for an outdoor festival unless under and by authority of a valid, unexpired and unrevoked special business license authorizing the outdoor festival issued pursuant to the provisions of EGMC Chapter 4.10 and this chapter.

#### **4.35.210 Filing time.**

Notwithstanding the provisions of EGMC Chapter 4.10, an application for a special business license to conduct an outdoor festival shall be filed not later than ninety (90) days in advance of the date the festival is proposed to commence.

#### **4.35.215 Application contents.**

In addition to the matters prescribed by EGMC Section 4.10.030, an application for a special business license to conduct an outdoor festival shall contain that information and material prescribed by EGMC Sections 4.35.220 through 4.35.240.

#### **4.35.220 Application contents – Identification of applicants.**

The application shall include the name (including aliases), age, residence, mailing address, email address, if any, and telephone numbers of each person making the application. If the application is filed by a partnership, the name (including aliases), age, residence and mailing address, and the telephone numbers of each partner shall be included. If the application is filed by a corporation, the application shall be signed by the president, vice president and secretary thereof and contain their residences, mailing addresses, email addresses, if any, and telephone numbers, and contain the telephone numbers, the mailing addresses, and the street addresses of the principal place of business of the corporation, and include a certified copy of the articles of incorporation and the bylaws of the corporation.

#### **4.35.225 Application contents – Identification of property owners.**

The application shall include the names, addresses and telephone numbers of the owners of the premises upon which the proposed outdoor festival, including automobile parking and other incidental uses, is to be held, and the exact location, legal description, and area of these premises. If any of the owners of the premises is a partnership, the names, addresses, email addresses, if any, and telephone numbers of all partners shall be included. If any of the owners of the premises is a corporation, the street address and telephone numbers of the principal place of business of the corporation, together with the names, addresses, email addresses, if any, and telephone numbers of the principal officers thereof shall be included.

#### **4.35.230 Application contents – Time – Attendance – Advertising.**

The application shall include:

- A. The date or dates and the hours during which the proposed outdoor festival is proposed to be conducted;
- B. A statement of the maximum number of persons proposed to be admitted to the outdoor festival on each day;
- C. Specification of the means of identifying the persons permitted to attend the festival, whether by tickets or otherwise; the number of tickets or other entitlements to admission to be issued for distribution; the names and addresses of all persons who are to receive



such entitlements for distribution; and the number of such entitlements to be provided to each distributor;

D. Identification of all fencing, the number and location of admission gates, security and other measures proposed to ensure that actual attendance does not exceed the maximum prescribed by the license; and

E. The text of all advertising intended for the purpose of publicizing the festival, which shall be subject to approval only in relation to compliance of the text with those requirements prescribed by EGMC Section 4.35.120.

#### **4.35.235 Application contents – Provisions for services.**

A. The application shall include a detailed statement of the applicant's plans to supply all facilities, services, resources and guarantees required by EGMC Sections 4.35.040 through 4.35.105, together with:

1. The names and addresses of all business entities or other person intended to supply the facilities, services and resources, coupled with an exact description of the facilities, services or resources each business entity or other person is intended to supply;

2. Contracts or other written statements executed by the providers showing the charges to be imposed for the facilities, services or resources to be provided, and the dates and amounts of all deposits or other advance payments required therefor; and

3. Financial statements by the applicant showing the availability of funds with which to make any deposits or advance payments required.

B. The application shall include copies of the written instruments required by EGMC Sections 4.35.030, 4.35.100 and 4.35.105. The bonds required by EGMC Sections 4.35.100 and 4.35.105 shall be filed with the City Manager not later than the date of and as a condition precedent to issuance of the special business license.

#### **4.35.240 Application contents – Maps and diagrams.**

The application shall include a map of white background print, drawn to scale, showing:

A. The location of the property on which the proposed outdoor festival and all related activities will be held;

B. The location of all highways, streets, alleys, lots, and parcels of land within seven hundred (700'0") feet of the exterior boundaries of the proposed use;

C. All access ways to the property;

D. All exterior access ways;

E. The location of all buildings and structures on the premises, or to be erected thereon, including, but without limitation to, all bandstands, stages, tents, other facilities for performers, and bleachers, tents or seats for those attending;

F. The location of all loudspeakers; and

G. The location of all toilets, medical facilities, lighting, emergency communications, drinking facilities, and solid waste receptacles.

#### **4.35.245 Fingerprints and photographs.**

An application shall not be deemed completed until each of the following persons associated with an applicant has been fingerprinted and photographed at the Police Department:

A. All general partners, if the applicant is a partnership;

B. All joint venturers, if the applicant is a joint venture; and if one or more of the joint venturers is a partnership or corporation, those partners, directors or stockholders to whom the requirements of this section would apply if the partnership or corporation were the applicant;

C. A sole proprietor, if the applicant is a sole proprietorship;

D. All owners of more than ten (10%) percent of the voting shares of stock, if the applicant is a commercial corporation;

E. All directors, if the applicant is either a commercial or nonprofit corporation;

F. All members of the management committee, if the applicant is a partnership or joint venture;

G. All members of a governing body or other board or committee to which management is entrusted, if the applicant is an unincorporated association; and

H. Each president, general manager, vice president, chief assistant manager, secretary, treasurer or any officer with equivalent or similar authority employed or retained by the firm who is the applicant.

#### **4.35.250 Processing of application.**

Upon receipt of a fully completed application, the City Manager shall provide copies thereof to the Chief of Police, Public Works Director, Chief of the Cosumnes Community Services District Fire Department, and Planning Director. Each of these officials shall determine whether, with regard to their specific areas of responsibility under this chapter, the proposed outdoor festival can be held without violating any of the

provisions of this chapter, and shall make such determinations as are otherwise required by the provisions of this chapter.

Each such official shall submit to the City Manager within twenty (20) days following the date of filing of a completed application his or her written findings, determinations and requirements.

#### **4.35.255 Issuance.**

Notwithstanding the provisions of EGMC Section 4.10.040, the City Manager shall act upon the application not later than thirty (30) days following the date of filing of the application, and the provisions of EGMC Section 4.10.040(A)(3) shall not constitute grounds for denial of a special business license to conduct an outdoor festival.

The City Manager shall issue the special business license within thirty (30) days after the date on which the application is filed, unless, in addition to the grounds prescribed by EGMC Section 4.10.040, either:

A. The Planning Director, Chief of Police, Public Works Director, Chief of the Cosumnes Community Services District Fire Department, or City Manager has found in writing that the proposed outdoor festival sites or facilities would not comply with all health, zoning, fire and safety requirements and standards imposed by the laws (including ordinances) applicable to the site where the outdoor festival is to be conducted, including this chapter; or

B. The Planning Director, Chief of Police, Public Works Director or City Manager finds in writing that any of the facilities, services, resources or guarantees proposed by the applicant as required by this chapter are insufficient to satisfy any discretionary requirement imposed by any of these officials pursuant to authority conferred by this chapter; or

C. The City Manager finds in writing that because of the inadequacy of financial resources of the applicant or for other reasons that there is a significant risk that any of the facilities, services, resources or guarantees required of the applicant by this chapter will not be provided.

#### **4.35.260 License requirements.**

A. A special business license authorizing an outdoor festival pursuant to the provisions of this chapter shall state on its face, and the City Manager shall be vested with discretionary authority to determine based upon considerations of health, safety and welfare as identified by this chapter, the following:

1. The maximum number of persons authorized to attend the festival on each date the festival will be conducted;

2. The dates and hours during which the festival may be conducted; and

3. Such conditions pertaining to conduct of the festival as may be deemed appropriate.

B. To the extent that the license authorizes a lower maximum number of persons to attend the festival than proposed by the applicant, authorizes the festival on fewer dates or during more restricted hours than proposed by the applicant, or contains conditions to which the applicant objects, such provisions of the license shall be appealable in the same manner and in accordance with the same procedure as if the application had been denied, and the appeal shall be governed by the procedures and standards prescribed by EGMC Sections 4.10.110 through 4.10.130.

### **Division 3. Other Business Regulation**

#### **Chapter 4.54**

#### **ADDITIONAL REGULATIONS AND PROHIBITIONS FOR BUSINESSES**

Sections:

##### **Article I. Street Businesses**

4.54.000 Purposes.

4.54.005 Definitions.

4.54.010 Prohibitions.

4.54.015 Exceptions.

4.54.020 Food vendors.

##### **Article II. Aggressive Solicitation**

4.54.100 Purposes.

4.54.105 Definitions.

4.54.110 Aggressive solicitation prohibited.

4.54.115 All solicitation prohibited at specified locations.

4.54.120 Penalty.

### **Article III. Drug Paraphernalia**

- 4.54.200 Purposes.
- 4.54.205 Definitions – Generally.
- 4.54.210 Definitions – “Drug paraphernalia.”
- 4.54.215 Proof.
- 4.54.220 Display of drug paraphernalia.
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### **Article IV. Fireworks**

- 4.54.300 General prohibition against possession, sale or use of fireworks.
- 4.54.310 Exception – Certain public displays.
- 4.54.320 Exception – Safe and sane fireworks.
- 4.54.330 License to sell fireworks required.
- 4.54.340 Wholesale storage of fireworks.
- 4.54.350 License restricted.
- 4.54.360 Application.
- 4.54.370 Denial of license.
- 4.54.380 Operation of stand.
- 4.54.390 Temporary fireworks stand.
- 4.54.400 General requirements for licensees.
- 4.54.410 Enforcement.
- 4.54.420 Revocation of license – Appeal.
- 4.54.430 Penalty – Infraction.
- 4.54.440 Seizure of fireworks.
- 4.54.450 Concurrent authorities.

**Article V. Public Convenience Determination for Alcohol Licenses**

- 4.54.500 Application for determination of public convenience.
- 4.54.510 Review of applications.
- 4.54.520 Hearing required.

**Article I. Street Businesses**

**4.54.000 Purposes.**

Regulation of the sale of merchandise upon the public streets and sidewalks within the City is necessary for the purpose of promoting the free and safe flow of vehicular and pedestrian traffic. The City Council finds that the use of such rights-of-way for such purposes in violation of the prohibitions of this article would constitute an interruption of the free flow of traffic and a serious and dangerous hazard to the public.

**4.54.005 Definitions.**

As used in this article, the following terms shall be ascribed the following meanings:

- A. "Public streets" shall mean that portion of any county, state or public road or highway within the City which is utilized for motor vehicle or bicycle traffic, including any improved shoulder adjacent to traffic lanes, and excluding sidewalks.
- B. "Sidewalks" shall mean any right-of-way within the City which is improved for public pedestrian traffic, including paved walks and pathways.
- C. "Stand" shall mean any fixed, temporary, permanent or mobile rack, counter, shelving, vehicle or other structure or device utilized for the purpose of transporting, storing, carrying or displaying merchandise or for the purpose of conducting sales of merchandise.
- D. "Merchandise" shall mean any item of personal property, including, but not limited to, written materials, foods and wares.

**4.54.010 Prohibitions.**

Except as otherwise provided by EGMC Section 4.54.015, it shall be unlawful for any person to:

- A. Hawk or peddle merchandise upon the public streets; or

B. Place a stand or merchandise upon a sidewalk for the purpose of hawking or peddling merchandise.

**4.54.015 Exceptions.**

The provisions of this article shall not be applicable to or deemed to prohibit:

A. The placement of newspaper racks upon sidewalks; or

B. The peddling or hawking of merchandise by the taking of orders or delivering of commodities from any vehicle which is parked not longer than required in order to complete a single transaction adjacent to the premises or residents of the customer, patron or purchaser.

**4.54.020 Food vendors.**

No person operating a vehicle from which candy, confections, ice cream, beverages or other articles of food are sold or offered for sale under the authority of EGMC Section 4.54.015(B):

A. Shall park or stand the vehicle for purposes of sale within three hundred fifty (350' 0") feet of the grounds of any public school in which children at or below the twelfth (12<sup>th</sup>) grade level are enrolled, and which is in session; or

B. Shall sell any nonfood items including, but not limited to, toys, clothing, or fireworks.

**Article II. Aggressive Solicitation**

**4.54.100 Purposes.**

The City Council finds that aggressive solicitation negatively impacts the quality of life of residents of the City. Patrons of commercial districts in which aggressive solicitation occurs are less likely to patronize the City's businesses and negatively impact the public interest in economic growth and tax revenues to the City. Mindful of everyone's right of free speech, the City Council finds there is a reasonable balance between those interests and the rights of listeners to be left alone – even in public places. Furthermore, the City Council takes notice that the specific provisions of this article have been judicially upheld by the California Supreme Court.

**4.54.105 Definitions.**

For purposes of this article:

A. "Solicit, ask or beg" includes using the spoken, written, or printed word, or bodily gestures, signs or other means with the purpose of obtaining an immediate donation of money or other thing of value or soliciting the sale of goods or services.

B. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, any street, highway, sidewalk, parking lot, plaza, transportation facility, school, place of amusement, park, playground, and any doorway, entrance, hallway, lobby and other portion of any business establishment, an apartment house or hotel not constituting a room or apartment designed for actual residence.

**4.54.110 Aggressive solicitation prohibited.**

A. No person shall solicit or beg in an aggressive manner in any public place.

B. "Aggressive manner" means any of the following:

1. Approaching or speaking to a person, or following a person before, during or after soliciting, asking or begging, if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, damage to or loss of property, or otherwise be intimidated into giving money or other thing of value;

2. Intentionally touching or causing physical contact with another person or an occupied vehicle without that person's consent in the course of soliciting, asking or begging;

3. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact;

4. Using violent or threatening gestures toward a person solicited either before, during, or after soliciting, asking or begging;

5. Persisting in closely following or approaching a person after the person solicited has been solicited and informed the solicitor by words or conduct that such person does not want to be solicited or does not want to give money or any other thing of value to the solicitor; or

6. Using profane, offensive or abusive language that is inherently likely to provoke an immediate reaction, either before or after solicitation.

**4.54.115 All solicitation prohibited at specified locations.**

A. Banks and ATMs. No person shall solicit, ask, or beg within fifteen (15' 0") feet of any entrance or exit of any bank, savings and loan association, credit union, or check cashing business during its business hours or within fifteen (15' 0") feet of any



automated teller machine during the time it is available for customers' use. However, when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility. No person shall solicit, ask or beg within an automated teller machine facility where a reasonable person would or should know that he or she does not have the permission to do so from the owner or other person lawfully in possession of such facility. Nothing in this subsection shall be construed to prohibit the lawful vending of goods and services within such areas.

1. Definitions. For purposes of this section:

- a. "Bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operated under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.
- b. "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.
- c. "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.
- d. "Check cashing business" means any person duly licensed as a check seller, bill payer, or prorater pursuant to Division 3, commencing with Section 12000, of the California Financial Code.
- e. "Automated teller machine" shall mean any electronic information-processing device that accepts or dispenses cash in connection with a credit, deposit, or convenience account.
- f. "Automated teller machine facility" shall mean a secure area comprised of one (1) or more automated teller machines, and any adjacent space that is made available to banking customers after regular banking hours.

2. Exemptions. The provisions of subsection (A) of this section shall not apply to any unenclosed automated teller machine located within any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports and school buildings as long as such automated teller machine shall be available for use only during the regular hours of operation of the building, structure or space in which such machine is located.

## B. Motor Vehicles and Parking Lots.

1. Motor Vehicles. No person shall approach an operator or occupant of a motor vehicle for the purpose of soliciting, asking or begging while such vehicle is located in any public place.

2. Parking Lots. No person shall solicit, ask or beg in any public parking lot or structure any time after dark. "After dark" means any time from one-half hour after sunset to one-half (0.5) hour before sunrise.

3. Exemptions. Subsection (B) of this section shall not apply to any of the following:

- a. Solicitations related to business that is being conducted on the subject premises by the owner or lawful tenants;
- b. Solicitations related to the lawful towing of a vehicle; or
- c. Solicitations related to emergency repairs requested by the operator or other occupant of a vehicle.

## C. Public Transportation Vehicles and Stops.

1. "Public transportation vehicle" shall mean any vehicle, including a trailer bus, designed, used or maintained for carrying ten (10) or more persons, including the driver; or a passenger vehicle designed for carrying fewer than ten (10) persons, including the driver, and used to carry passengers for hire.

2. Any person who solicits, asks or begs in any public transportation vehicle, or within ten (10' 0") feet of any designated or posted public transportation vehicle stop, is guilty of a violation of this section if:

- a. He or she remains there after being asked to leave by the owner, driver, or operator of a public transportation vehicle; the agent of the owner, driver or operator of a public transportation vehicle; the owner or manager of a public transportation facility; the agent of the owner or manager of a public transportation facility; a member of a security force employed by the public transportation facility; or by a peace officer, as defined in Title 3, Chapter 4.5 (commencing with Section 830) of the California Penal Code; or
- b. Within the immediately preceding thirty (30) days, he or she engages in a solicitation at that location and had been asked to leave by a person specified in subsection (C)(2)(a) of this section.
- c. Subsection (C)(2)(b) of this section is not violated if a person who has been requested to leave enters the property within the designated period and solicits,

asks, or begs with the express authorization of a person specified in subsection (C)(2)(a) of this section.

D. Restaurants. Any person who solicits, asks, or begs in any outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption is guilty of a violation of this section if:

1. He or she remains there after being asked to leave by the owner, manager or supervisor of the restaurant or other food establishment; the agent of the owner, manager or supervisor of the restaurant; a member of a security force employed by the restaurant; or by a peace officer, as defined in Title 3, Chapter 4.5 (commencing with Section 830) of the California Penal Code, acting at the request of any of the persons specified in subsection (D) of this section; or

2. Within the immediately preceding thirty (30) days, he or she engages in a solicitation at that location and had been asked to leave by a person specified in subsection (D)(1) of this section.

3. Subsection (D)(2) of this section is not violated if a person who has been requested to leave enters the property within the designated period and solicits, asks, or begs with the express authorization of a person specified in subsection (D)(1) of this section.

#### **4.54.120 Penalty.**

A violation of this section is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion. Nothing in this article shall limit or preclude the enforcement of other applicable laws.

### **Article III. Drug Paraphernalia**

#### **4.54.200 Purposes.**

The illegal use of controlled substances within the City creates serious social, medical and law enforcement problems. The illegal use of such substances by persons under eighteen (18) years of age is a matter of great public interest. It is causing serious physical and psychological damage to the youth of this community, impairment of educational achievement and of the efficiency of the educational system, increases in nondrug-related crime and a threat to the ability of the community to ensure future generations of responsible and productive adults, all to the detriment of the health, safety and welfare of the residents of Elk Grove.

The proliferation of the display of drug paraphernalia in retail stores within the City and the distribution of such paraphernalia intensifies and otherwise compounds the problem of illegal use of controlled substances within this community.

A ban only upon the display and distribution of drug paraphernalia to persons under eighteen (18) years of age would not be practical. The person who displays or distributes drug paraphernalia would have difficulty determining who could lawfully view or receive drug paraphernalia. The already thinly staffed law enforcement agencies would be subjected to intolerable added enforcement burdens by adding age of a person who views or receives paraphernalia as an element of a prohibition upon display and distribution. A significant number of high school students are eighteen (18) years of age or older. It would be lawful to distribute paraphernalia to some students attending the same school in which the distribution to other students would be prohibited. Permitted display and distribution to adults within the community would symbolize a public tolerance of illegal drug use, making it difficult to explain the rationale of programs directed against similar abuse by youth. The problem of illegal consumption of controlled substances by adults within this community is significant and substantial, necessitating a cessation of the encouragement of drug abuse which the display and distribution of drug paraphernalia create.

This article is a measure which is necessary in order to discourage the illegal use of controlled substances within the City.

#### **4.54.205 Definitions – Generally.**

As used in this article, the following terms shall be ascribed the following meanings:

A. "Business" means a fixed location, whether indoors or outdoors, at which merchandise is offered for sale at retail.

B. "Controlled substance" means those controlled substances set forth in Sections 11054, 11055, 11056, 11057 and 11058 of the California Health and Safety Code, identified as Schedules I through V, inclusive.

C. "Display" means to show to a patron or place in a manner so as to be available for viewing or inspection by a patron.

D. "Distribute" means to transfer ownership or a possessory interest to another, whether for consideration or as a gratuity. "Distribute" includes both sales and gifts.

E. "Patron" means a person who enters a business for the purpose of purchasing or viewing as a shopper merchandise offered for sale at the business.

#### **4.54.210 Definitions – “Drug paraphernalia.”**

As used in this article, the term “drug paraphernalia” means all equipment, products, and any materials of any kind which are intended by a person charged with a violation of this article for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any law of the state. “Drug paraphernalia” includes, but is not limited to, all of the following:

- A. Kits intended for use in the planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- B. Kits intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- C. Isomerization devices intended for use in increasing the potency of any species of plant which is a controlled substance;
- D. Testing equipment intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
- E. Scales and balances intended for use in weighing or measuring controlled substances;
- F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, intended for use in cutting controlled substances;
- G. Separation gins and sifters intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- H. Blenders, bowls, containers, spoons and mixing devices intended for use in compounding controlled substances;
- I. Capsules, balloons, envelopes, and other containers intended for use in packaging small quantities of controlled substances;
- J. Containers and other objects intended for use in storing or concealing controlled substances; and
- K. Objects intended for use in injecting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls,
2. Water pipes,
3. Carburetion tubes and devices,
4. Smoking and carburetion masks,
5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand,
6. Miniature cocaine spoons and cocaine vials,
7. Chamber pipes,
8. Carburetor pipes,
9. Air-driven pipes,
10. Bongs.

**4.54.215 Proof.**

In determining whether an object is “drug paraphernalia,” a court or other authority may consider, in addition to all other logically relevant factors, the following:

- A. Statements by an owner or by anyone in control of the object concerning its use;
- B. The proximity of the object to controlled substances;
- C. The existence of any residue of controlled substances on the object;
- D. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver to persons whom he knows intend to use the object to facilitate a violation of the laws of the state relating to controlled substances;
- E. Instructions, oral or written, provided with the object concerning its use;
- F. Descriptive materials accompanying the object which explain or depict its use;
- G. National and local advertising concerning its use;
- H. The manner in which the object is displayed for sale;
- I. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

J. The existence or scope of legitimate uses for the object in the community; and

K. Expert testimony concerning its use.

**4.54.220 Display of drug paraphernalia.**

Except as authorized by law, it is unlawful for any person to willfully maintain or operate any business knowing or under circumstances where one reasonably should know that drug paraphernalia is displayed at such business.

Except as authorized by law, it is unlawful for any person who is the owner of a business, an employee thereof or one who works at such business as an agent of the owner, to willfully display drug paraphernalia at such business.

**4.54.225 Distribution of drug paraphernalia.**

Except as authorized by law, it is unlawful for any person to willfully distribute to another person drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of any law of the state.

**4.54.230 Exceptions.**

No provision of this article shall be deemed, whether directly or indirectly, to authorize any act which is otherwise prohibited by any law of the state or require any act which is otherwise prohibited by any law of the state. Nor shall any provision of this article be deemed, whether directly or indirectly, to prohibit any act or acts which are prohibited by any law of the state.

**Article IV. Fireworks**

**4.54.300 General prohibition against possession, sale or use of fireworks.**

Except as otherwise provided in this article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

**4.54.310 Exception – Certain public displays.**

Public displays of fireworks may be given with a written permit issued by the Chief of the Cosumnes Community Services District Fire Department or his or her designee so long as such display takes place under the supervision and direction of a state of California licensed fireworks operator.

**4.54.320 Exception – Safe and sane fireworks.**

It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as “safe and sane fireworks” in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28th and ending at 10.00 p.m. on July 5th of the same year.

**4.54.330 License to sell fireworks required.**

It shall be unlawful for any person to sell “safe and sane fireworks” within the City without a valid City business license authorizing such sales.

**4.54.340 Wholesale storage of fireworks.**

The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the Fire District in whose jurisdiction the storage site is located and the Building Official. Any such storage is limited to the period from June 1st through July 15th of each year.

**4.54.350 License restricted.**

A. No City business license authorizing the sale of “safe and sane fireworks” shall be issued to any person, firm, corporation, organization or group other than organizations which are exempted from the payment of the bank and corporation tax by Section 23701(a), 23701(b), 23701(d), 23701(e), 23701(f), 23701(g), 237011 or 23701(w) of the Revenue and Taxation Code as long as the organization satisfies the following criteria:

1. It has its principal and permanent meeting place in the City of Elk Grove;
2. It has been organized and established in the City of Elk Grove for a continuous period of at least one (1) year immediately proceeding the application for a permit; and
3. It has a bona fide membership of at least twenty (20) members.

B. No organization shall submit more than two (2) applications for licenses to sell fireworks within the City. Submittal of more than two (2) such applications shall be grounds for denial of all applications.



C. City business licenses authorizing the sale of “safe and sane fireworks” shall not be transferable to another organization.

D. Transfer of temporary stands from the location for which the license was initially issued may be made if the application is made to the City Manager on or before the first day of June, and if any such location change has been approved in writing by the Cosumnes Community Services District Fire Department, the Building Official, and otherwise complies with all provisions of this article regulating the location of temporary fireworks stands.

#### **4.54.360 Application.**

A. All applications for a City business license to sell fireworks shall be in writing to the City Manager on forms supplied by the City. Applications shall be received and filed with the City Manager on or before the second Tuesday in April of each year. Applications shall specify the proposed location of the fireworks stand, the name, address and telephone number of one (1) or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored, such other information as may be required by the City Manager, and an application fee in an amount periodically set by resolution of the City Council.

B. The application shall be made in triplicate (x3). The original of the application shall be retained by the City Manager, one (1) copy shall be transmitted to the Cosumnes Community Services District, and one (1) copy shall be sent to the City Building Inspection Division.

C. Applicants for a license shall be notified by the City Manager of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two (2) weeks of the notification of the tentative approval of the City business license, the applicant shall furnish to the City Manager or his or her designee evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury contractual liability, independent contractors, and products/completed operations, with One Million and no/100ths (\$1,000,000.00) Dollars combined single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products sold and to premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self-insurance maintained by the City of Elk Grove shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Manager or his or her designee shall be the certificate holder. In the event of nonrenewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the City Manager or his or her

designee. The insurance policy shall be limited to the specific location for which the City business license is issued. The City Manager shall issue the license to the applicant upon the presentation and approval of required proof of insurance.

D. A copy of the City business license shall be transmitted to the Cosumnes Community Services District Fire Department.

E. The continued validity of any City business license issued pursuant to this article shall be subject to the requirement that at least one (1) of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by the Cosumnes Community Services District Fire Department. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

#### **4.54.370 Denial of license.**

A. The City Manager shall issue the City business license to sell fireworks unless:

1. The City Manager finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this article;

2. The City Manager finds in writing that the applicant is not in compliance with any of the requirements of this article;

3. The City Manager finds in writing that the applicant falls within the provisions of EGMC Section 4.54.420(C); or

4. Either the Cosumnes Community Services District Fire Department or the City Building Inspection Division fails to approve the application.

B. Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in EGMC Section 4.54.420(B).

#### **4.54.380 Operation of stand.**

A. No person shall sell fireworks to any person under the age of eighteen (18).

B. Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 5th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

C. No person other than the licensee organization shall operate the stand for which the license is issued or share or otherwise participate in the profits of the operation of such stand.

D. No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.

E. No person under the age of eighteen (18) shall sell or participate in the sale of fireworks.

F. No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand, except compensation may be paid for security personnel during nonsale hours and to the party authorizing location of the stand on its property.

G. Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

#### **4.54.390 Temporary fireworks stand.**

All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

A. No fireworks stand shall be located within twenty-five (25') feet of any other building or within one hundred (100' 0") feet of any gasoline pump or distribution point.

B. Fireworks stands need not comply with the provisions of the applicable building code except all stands shall be erected under the supervision of the Building Official, who shall require that stands be constructed in a manner that will reasonably ensure the safety of attendants and patrons and that any electrical installations shall comply with all applicable codes.

C. No stand shall have a floor area in excess of seven hundred fifty (750 ft<sup>2</sup>) square feet.

D. Each stand shall have at least two (2) exits. Each stand in excess of forty (40' 0") feet in length shall have at least three (3) exits spaced approximately equidistant apart, except in no case shall the distance between exits exceed twenty (20' 0") feet. Exit doors shall be not less than twenty-four (24") inches wide and six (6' 0") feet and two (2") inches in height and shall swing in the direction of exit travel.

E. Each stand shall be provided with two (2) two-and-one-half (2.5) gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

F. Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2 per the Zoning Code, or in any other zoning classification if the Building Official certifies in writing to the City Manager that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

**4.54.400 General requirements for licensees.**

A. Stands shall not be located closer than six hundred (600' 0") feet apart, unless separated by a principal arterial roadway.

B. All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five (25' 0") feet surrounding the stand.

C. "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

D. Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for the sale, dispensing or storage of fireworks.

E. All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the fifth day of July shall be returned to the distributor or wholesaler and removed from the City within ten (10) days. On closing of stands, all litter shall be removed from the premises.

F. No fuel-powered generator or similar equipment shall be allowed within fifty (50' 0") feet of a fireworks stand.

**4.54.410 Enforcement.**

The division of authority for enforcement of this article shall be as follows:

A. The Chief of the Cosumnes Community Services District Fire Department or his or her designated representatives shall have authority to enforce this article and issue citations for violations in their respective districts.

B. The Building Official shall have authority to enforce this article in any area lying without any Fire Protection District.

C. The Building Official shall have authority to enforce this article in any Fire Protection District upon request of the Chief of the Fire Protection District or the governing body thereof.

**4.54.420 Revocation of license – Appeal.**

A. The Building Official may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of EGMC Sections 4.54.360(E), 4.54.380(A), (B) or (E), or 4.54.400(D). If the revocation occurs between June 22nd and

July 5th, the Building Official shall inform the licensee that the licensee may seek review of the Building Official's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the Building Official shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee on that day to review the Building Official's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (B) of this section shall apply.

B. The Building Official may revoke the license of any licensee who violates any provision of this article not specified in subsection (A) of this section. Such revocation shall not take effect for five (5) days, during which time the licensee may seek review of the Building Official's decision by submitting a written request for review to the City Manager. The Building Official shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's designee, shall meet with the licensee and the Building Official to review the City Building Official's decision. The decision of the City Manager or his designee shall be final.

C. Any licensee whose permit has been revoked pursuant to subsection (A) or (B) of this section shall be barred from receiving a license under this article for five (5) years from the date of revocation.

#### **4.54.430 Penalty – Infraction.**

A. Notwithstanding the provisions of EGMC Chapter 1.04 or any other section of this code, and with the exception of the fourth (4<sup>th</sup>) and subsequent violation of this article within one (1) year as provided in subsection (C) of this section, the violation of any of the provisions of this article is an infraction subject to the procedures set forth in Sections 19.6 and 19.7 of the Penal Code.

#### **4.54.440 Seizure of fireworks.**

The Chief, or the Chief's designee, of the Cosumnes Community Services District Fire Department may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this article when such violation creates an imminent threat to public health or safety.

#### **4.54.450 Concurrent authorities.**

This article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the county, the state, or any other legal entity or agency having jurisdiction.

### **Article V. Public Convenience Determination for Alcohol Licenses**

#### **4.54.500 Application for determination of public convenience.**

Any person whose application for any alcohol license is subject to a determination of public convenience or necessity by the City pursuant to Section 23958.4 of the Business and Professions Code shall submit an application to the City for a determination whether or not the public convenience and necessity would be served by the granting of such license. Such application shall be made on forms approved by the City Manager and shall contain such information as required by him or her. At a minimum, any application shall contain that information required by the Zoning Code. The application shall be accompanied by payment of a fee to be established by resolution of the City Council calculated to offset the costs of the review and determination.

#### **4.54.510 Review of applications.**

A. Upon receipt of such request for a determination of public convenience or necessity or notice of an application for an alcohol license from the Department of Alcoholic Beverage Control ("ABC"), the City Manager shall refer such application to the departments and advisory bodies of the City for review and comment.

B. At a minimum, the Chief of Police shall determine whether there are existing problems regarding criminal activity at the applicant premises or in the area surrounding the applicant premises. If the Chief of Police determines that there are such existing problems with criminal activity, he shall report such problems, in writing, to the City Manager.

C. At a minimum, the Planning Department shall determine whether the applicant premises are within the appropriate land use designations and have received all required entitlements to permit the type of sale of alcoholic beverages described in the application. The Department shall report its determination, in writing, to the City Manager.

D. At a minimum, the Planning Department shall also determine whether there is a pending zoning enforcement action regarding the applicant premises. If the Department determines that there is a pending enforcement action, it shall report such, in writing, to the City Manager.

E. At a minimum, the City personnel responsible for business licenses shall determine whether any required business license has been issued and is in good standing for the applicant premises. If the City personnel determine that a license is required and has not been issued or is not in good standing, they shall report such, in writing, to the City Manager.

F. At a minimum, the Building Official shall determine whether there are any building code violations at the applicant premises and shall report such, in writing, to the City Manager.

G. The City Manager shall also determine whether any protests were lodged with the ABC in relation to the applicant's request for a license with that body.

H. The written reports required by this section are to be received by the City Manager within fifteen (15) days from the date the application is forwarded to such departments and advisory bodies.

**4.54.520 Hearing required.**

A. Proceedings to determine the public convenience or necessity of issuing any alcohol license subject to Section 23958.4(b)(2) of the Business and Professions Code shall be scheduled before the City Council. Notice of the public hearing shall be given in the same manner as required by EGMC Section 23.14.04 of the Zoning Code.

B. The hearing shall be held without regard to the technical rules of evidence and all persons desiring to appear shall be permitted to do so. The City Manager or his or her designee shall present the results of all written reports from the City departments and advisory bodies. The alcohol license applicant shall be required to demonstrate, by substantial evidence, that the public convenience or necessity will be served by the issuance of a license.

C. The public hearing may be continued from time. At the conclusion of the hearing, the City Council shall determine, within the limits of Section 23958.4(b)(2) of the Business and Professions Code, whether the public convenience or necessity will be served by the issuance of a license for the alcohol license applicant premises. The determination shall be reduced to writing by the City Manager and shall be served by certified mail upon the alcohol license applicant and ABC.

D. The City Council may determine that the public convenience or necessity will be met only if certain conditions (specifically authorized by Sections 23800 through 23805 (particularly Sections 23800(a) and 23801) of the Business and Professions Code) are imposed upon any license issued by the Department of Alcoholic Beverage Control. Such conditions shall be included in the City Council's decision and shall be submitted by the City within the time periods specified in the Business and Professions Code in order to preserve the rights of the City to seek imposition of such conditions.

## **TITLE 5**

### **FRANCHISES**

#### **Chapters:**

#### **Chapter 5.50 Cable Television Ordinance**

#### **Chapter 5.60 Francises**

#### **Chapter 5.75 Cable Television Licensing**

#### **Chapter 5.50**

### **CABLE TELEVISION ORDINANCE**

#### **Sections:**

5.50.010 Cable Television licensing.

#### **5.50.010 Cable Television licensing.**

This chapter shall be known and cited as the "Cable Television Ordinance". Those certain documents, marked and designated as County of Sacramento Code, Title 5, Chapter 5.50, including, but not limited to, the identification and regulation of: cable television franchises, the cable television commission, the system capability and standards, the prevailing rates, the construction and extension of the system, use of streets, services, franchise fees and rates, security, indemnification, insurance, assignments, the Video Customer Service Act, and the Digital Infrastructure and Video Competition Act of 2006, are hereby referred to, adopted, and made a part of this Chapter as though fully set forth herein. The Elk Grove City Council reserves the right,



by amendment to this Chapter, to exclude portions of the designated incorporated chapter and such exclusions, if any, are set forth in this Chapter.

## **Chapter 5.60**

### **FRANCHISES**

Sections:

5.60.010 Required.

#### **5.60.010 Required.**

It is unlawful for any person, firm or corporation to place in or upon any street, road, highway, or other public place in the City, any pole, mast, or other structure upon or from which to suspend wires for the purpose of using the same for telephone, telegraph, or other means of transmitting or communicating messages over wires or by electric appliances of any character whatever, or for the transmission of electricity, or to place under the surface of the streets, roads, highways, and other public places in the City, wires for any of such purposes, without first having procured from the City Council, a franchise authorizing the use of such street, roads, highways, and other public places in the City, for such purposes.

## **Chapter 5.75 CABLE TELEVISION LICENSING**

Sections:

5.75.010 Cable Television licensing.

#### **5.75.010 Cable Television licensing.**

This chapter shall be known and cited as the "Cable Television Licensing Ordinance". Those certain documents, marked and designated as County of Sacramento Code, Title 5, Chapter 5.75, including, but not limited to, the identification and regulation of: communications with regulatory agencies, issuance of licenses, system capability and standards, construction requirements, services, license fees, bonds and insurance, transfer and termination, and the Video Customer Service Act, are hereby referred to, adopted, and made a part of this Chapter as though fully set forth herein. The Elk Grove

City Council reserves the right, by amendment to this Chapter, to exclude portions of the designated incorporated chapter and such exclusions, if any, are set forth in this Chapter.

## **TITLE 6**

### **HEALTH AND SANITATION**

#### **Chapters:**

**Chapter 6.02 Pollution**

**Chapter 6.06 Solid Waste Management**

**Chapter 6.10 Residential Refuse Hauler Fees**

**Chapter 6.14 Garbage in Watercourses**

**Chapter 6.18 Abandoned Vehicles**

**Chapter 6.22 Clean Indoor Air and Health Protection**

**Chapter 6.26 Distribution of Tobacco Products to Minors**

**Chapter 6.30 Public Consumption of Marijuana**

#### **Chapter 6.02**

### **POLLUTION**

#### **Sections:**

6.02.010 Discharging into rivers unlawful.

6.02.020 Privy and sewer restrictions.

6.02.030 Animals.

6.02.040 Washing clothes – Bathing.

6.02.050 Enforcement.

#### **6.02.010 Discharging into rivers unlawful.**

It is unlawful to discharge or deposit, or cause or suffer to be discharged or deposited, any sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral or vegetable matter or substance, offensive, injurious or dangerous to health, in Laguna Creek, Elk Grove Creek, Whitehouse Creek, Strawberry Creek, Shed A Channel, Shed B Channel, Shed C Channel, and Laguna West, and any of the feeders or tributaries of these watercourses at any point or place above the City of Elk Grove; or to discharge or deposit or cause or suffer to be discharged or deposited any such offensive, injurious or dangerous matter or substance upon the land or places adjoining such waters as to cause or suffer such matter or substance to flow or to be emptied or drained into such waters.

#### **6.02.020 Privy and sewer restrictions.**

It is unlawful to erect, construct, excavate or maintain, or cause to be erected, constructed, excavated or maintained, above the City of Elk Grove, any privy, vault, cesspool, sewer, pipes or conduits, for the discharge of impure waters, gas, vapors, oils, acids, tar or other matter or substance offensive, injurious or dangerous to health, whereby any part of such matter or substance shall empty, flow, seep, drain, condense or otherwise pollute or affect the Laguna Creek, Elk Grove Creek, Whitehouse Creek, Strawberry Creek, Shed A Channel, Shed B Channel, Shed C Channel, and Laguna West, and any of the feeders or tributaries of these watercourses; or to erect or maintain any temporary or permanent house, camp or tent so near to the rivers, feeders, streams or tributaries as to cause or suffer the drainage, seepage or flow of impure waters, or any other liquids or the discharge or deposit therefrom, or any animal, mineral or vegetable matter, to corrupt or pollute such waters, or to erect or maintain any temporary or permanent houseboat, scow or barge, dredger or other boat upon any of the waters of the rivers, streams or tributaries thereof, where any other vegetable, mineral or animal matter shall or may corrupt or pollute the water.

#### **6.02.030 Animals.**

It is unlawful to cause or permit any horses, cattle, sheep, swine, poultry or any kind of livestock or domestic animals to pollute the waters of Laguna Creek, Elk Grove Creek, Whitehouse Creek, Strawberry Creek, Shed A Channel, Shed B Channel, Shed C Channel, and Laguna West, and any of the feeders or tributaries of these watercourse within a distance of two (2) miles above the City of Elk Grove.

#### **6.02.040 Washing clothes – Bathing.**

It is unlawful for any person to bathe or wash clothes Laguna Creek, Elk Grove Creek, Whitehouse Creek, Strawberry Creek, Shed A Channel, Shed B Channel, Shed C

Channel, and Laguna West, and any of the feeders or tributaries of these watercourse, within a distance of two (2) miles above the City of Elk Grove.

**6.02.050 Enforcement.**

The City Manager or his or her designee shall enforce the provisions of this chapter, and diligently cause the arrest and prosecution of any and all persons found violating any of the terms or provisions of this chapter.

**Chapter 6.06**

**SOLID WASTE MANAGEMENT**

Sections:

**Article I. General Provisions**

- 6.06.010 Purposes.
- 6.06.015 Findings.
- 6.06.020 Refuse collection areas described.
- 6.06.025 Service delivery systems.
- 6.06.030 Definitions.
- 6.06.035 Rules and regulations.
- 6.06.040 Applicability of state regulations.
- 6.06.045 Federal and state standards.
- 6.06.050 Enforcement.
- 6.06.055 Abatement proceedings.
- 6.06.060 Notices.

**Article II. Sanitation Regulations**

- 6.06.100 On-site storage.
- 6.06.105 Collection or transportation prohibited.
- 6.06.110 Exempt collection or transportation.

- 6.06.115 Refuse removal.
- 6.06.120 Mandatory service.
- 6.06.125 Accumulation on streets.
- 6.06.130 Rubbish accumulation.
- 6.06.135 Construction and demolition refuse.
- 6.06.140 Public agency exemption.
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- 6.06.150 Use of containers.
- 6.06.160 Ownership of refuse and salvageable materials.
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### **Article III. Collection Permits – Right and Duties of Permittees**

- 6.06.200 Types of permits/contracts.
- 6.06.205 Entitlement of permits.
- 6.06.210 Existing permits.
- 6.06.215 Special refuse collection permit/contract.
- 6.06.220 General refuse collection permits/contracts.
- 6.06.225 Geographical areas – General permits.
- 6.06.230 Modification of geographical areas – General permits.
- 6.06.235 Service – General permits.
- 6.06.240 Rates and charges – General permits/contracts.
- 6.06.245 Billing procedures and practices – General permits.
- 6.06.250 Modification of exclusivity – General permits.
- 6.06.255 Transferability.
- 6.06.260 Procedure for transfer.
- 6.06.265 Signs.

- 6.06.270 Fees.
- 6.06.275 Truck requirements.
- 6.06.280 Inspections.
- 6.06.285 Insurance.
- 6.06.290 Office required.
- 6.06.295 Garbage disposal.
- 6.06.300 Refuse disposal restrictions.

**Article IV. Issuance – Renewal – Revocation – Collection Permits**

- 6.06.400 Issuance of special refuse collection permits.
- 6.06.410 Appeals.
- 6.06.415 Proposals for general permits.
- 6.06.420 Issuance of general permits.
- 6.06.421 Terms and renewal of general permits.
- 6.06.422 Issuance and renewal of special refuse collection permits.
- 6.06.425 Application for Sheriff's review.
- 6.06.430 Sheriff's determination.
- 6.06.450 Revocation – Policy.
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**Article V. Residential Solid Waste Handling Service Charges**

- 6.06.500 Purpose.
- 6.06.510 Level of service charges.
- 6.06.520 Owner liability for service charges.
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6.06.540 Form of bills.

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## **Article VI. Commercial Solid Waste Handling Requirements**

6.06.600 Establishment of commercial refuse hauler fees.

6.06.610 Records, reports and City audit and inspection.

6.06.620 License fees or business taxes.

6.06.630 Use of commercial refuse hauler fees.

6.06.640 Violations or infractions.

6.06.650 Commercial hauler registration.

## **Article I. General Provisions**

### **6.06.010 Purposes.**

The county has, to a substantial degree, relied upon private companies to collect and transport refuse within the unincorporated area. The county has regulated such services through the maintenance of exclusive and nonexclusive refuse collection areas.

For reasons described by EGMC Section 6.06.020, exclusive areas have been established in the rural region south of Calvine Road (Areas B and C). Collection within that region has traditionally been provided by haulers who have been licensed and regulated within the exclusive areas.

In 1958, the Board of Supervisors of Sacramento County, pursuant to competitive bidding, let two exclusive franchises for the collection of residential and commercial refuse north of Calvine Road (Area A), one north of the American River and the other south of the American River. Pursuant to the discovery that there had been fraud and collusion among bidders for the franchise north of the American River, the franchise was terminated in 1963.

Collection responsibility north of the American River was delegated, on an emergency basis, to another private hauler by contract. In 1968, the hauler became financially unstable and went out of business. The county undertook the performance of residential refuse collection services directly by acquiring equipment, employing personnel, and acting as an enterprise. Six nonexclusive permits were issued for commercial collection north of the American River. When the second franchise terminated in 1973, the county undertook residential collection south of the American River and authorized the six permittees to collect commercial refuse within that area as well. Subsequently established interlocking relationships between the commercial permittees resulted, in 1975, in the enactment of regulations requiring permittees to divest themselves of ownership interests in each other.

In 1996, the Sacramento Regional Solid Waste Authority assumed regulatory responsibility for commercial permitting in both the City of Sacramento and the unincorporated areas of the county. The purpose for this change in regulatory authority was two-fold: (A) to streamline the regulatory process for permittees who operate within both the City of Sacramento and the unincorporated areas of the county; and (B) to provide a uniform mechanism for the regulation of commercial solid waste collection, removal and transportation within the City of Sacramento and the unincorporated areas of the county.

The purposes of this chapter are to express the county's overall plan for the collection of refuse within the unincorporated area and to establish regulations ensuring the implementation and execution of the plan in a manner which protects the health, safety and welfare.

#### **6.06.015 Findings.**

The Board of Supervisors finds as follows:

A. The safe and sanitary collection and disposal of refuse is a function the adequate and efficient performance of which is so intertwined with protection of the health, safety and welfare as to require either direct provision by government or constant monitoring, regulation and evaluation by government in order to ensure continuing adequacy, reliability and efficiency of private service systems;

B. Economics and efficiencies inherent in privately provided commercial and rural collection services will best promote the public interest, if such services are sufficiently monitored, regulated and evaluated to ensure reliability and adequacy;

C. A variety of factors dictate necessity for exclusivity in the provision of refuse collection services in varying degrees depending upon the nature, extent and magnitude of service demands;



D. The factors include, but are not limited to, the following:

1. The provision of efficient service requires heavy capital investment in trucks and other equipment and maintenance of trucks in continuing operating condition in order to ensure regularity of service and the meeting of collection schedules;

2. Unrestricted competition may or may not result in a sufficient number of adequately equipped firms to satisfy the total demand and need for reliable collection service, and may discourage the introduction of capital investment among competing firms sufficient to satisfy service inadequacies;

3. By severely restricting the authority of a local agency to substitute an exclusive, direct governmental or franchised service for service provided by holders of permits, state law (Sections 4270 through 4273 of the Health and Safety Code) impairs the ability of local government to effectively correct any service inadequacies produced by an unrestricted competitive environment;

4. Revocation of permits for cause relating to unreliable or inadequate service or failure to fulfill minimum standards requires heavy commitments of county staff, prolonged investigations, and results in time-consuming and costly hearings and litigation while services remain inadequate and endanger the health, safety and welfare;

5. Certain types of collection services (particularly those in areas with low density) are so costly as to make the price of collection prohibitive unless the collector can equalize costs and charges associated with low density or rural areas with those associated with high density or urban areas, and competition will divide the high density, high efficiency business in a manner which produces inadequate or nonexistent service to low density areas;

6. Certain types of collection (particularly residential) will produce the most efficient service at the lowest cost when collection routes provide door-to-door service uninterrupted by competition in the same area; and

7. Objectives of energy conservation in fuel consumed by collection equipment and the reduction of traffic congestion on roads and streets.

E. Sacramento County has the second largest unincorporated area population of any county within the state of California, and experiences service and regulatory demands similar to those in large cities.

F. The unincorporated area population of the county is predominantly concentrated north of Cal-vine Road. The remainder of the unincorporated area is devoted to agricultural uses with sparse and extremely low density population and intermittent commercial use;

G. The demographical characteristics of the county require variable approaches to the provision of refuse collection services based upon factors which include, but are not limited to, a weighing and balancing of the following:

1. The degree to which exclusivity of collection is necessary to promote the public interest;
2. The nature and extent of capital investment required to provide adequate services within particular areas;
3. The costs of providing collection services within various areas; and
4. The extent to which the costs of serving areas to which service cannot be provided economically should be spread to high density areas.

**6.06.020 Refuse collection areas described.**

The Board has determined that in order to facilitate the collection of refuse within the county, the unincorporated territory of the county shall be divided into the following described areas:

A. "Area A" (north service area) shall include all the unincorporated territory of the county lying north of the centerline of Calvine Road and its westerly and easterly imaginary extensions.

B. "Area B" (southeast service area) shall include all of the unincorporated territory of the county bounded on the north by the centerline of Calvine Road and its imaginary easterly extension, then on the west by the centerline of 99E south to the centerline of Laguna Boulevard, then west to Franklin Boulevard, then south on Franklin Boulevard to the county line, including all parcels fronting on Franklin Boulevard, then east on the southern county line, then north on the eastern county line to the imaginary easterly extension of Calvine Road. (Area B includes areas C, D, and E as was defined in this section immediately prior to the amending of this section as herein written).

C. Through March 1, 1992, "area C" (southwest service area) shall include all of the unincorporated territory of the county bounded on the north by the imaginary line extending west from 99E on Calvine Road, including all of Cotton Lane, to the City limits, then in a south and west direction following the City limits, around to a due west imaginary line connecting Calvine Road and the western county line, then bounded on the west and the south by the county line, then bounded on the east by Franklin Boulevard, excluding all parcels fronting on Franklin Boulevard, north to Laguna Boulevard, then east on the centerline of Laguna Boulevard to 99E, then north on the centerline of 99E to Calvine Road.

D. After March 1, 1991, "area C" (southwest service area) shall include all of the unincorporated territory of the county bounded on the north by the imaginary line extending west from 99E on Cal-vine Road, including all of Cotton Lane, to the City limits, then in a south and west direction following the City limits, then bounded on the west and the south by the county line, then bounded on the east by Franklin Boulevard, excluding all parcels fronting on Franklin Boulevard, north to Laguna Boulevard, then east on the centerline of Laguna Boulevard to 99E, then north on the centerline of 99E to Calvine Road.

#### **6.06.025 Service delivery systems.**

It is hereby determined that the public interest will be best promoted within the unincorporated area of the county by the following types of service delivery systems:

A. County Refuse Enterprise. By service within the entirety of area A provided directly and exclusively by the county in the collection of refuse in residential areas from single-family residences, duplex residences, and to certain multiple-family dwelling units and commercial establishments which use standard garbage cans or other county-supplied containers other than bins, drop boxes or compactors.

B. Commercial Permittees. By the issuance within areas A, B and C of competitive, nonexclusive permits for the collection by private companies of commercially containerized refuse produced by commercial enterprises and multiple-family dwelling units of three or more units, which nonexclusive permits shall be issued by the SWA to all qualified applicants meeting applicable criteria established by the SWA.

C. South Area Contractors. Before March 1, 1992, by Board issuance of exclusive or nonexclusive area permits or contracts to private companies to provide collection of refuse produced by residential and commercial development within areas B and C.

D. After March 1, 1992, by Board issuance of exclusive or nonexclusive area permits or contracts to private companies to provide collection of refuse produced by residential development within areas B and C.

#### **6.06.030 Definitions.**

For purposes of this Chapter, the following terms are defined as follows:

A. "Board" means the Board of Supervisors of the County.

B. "California Integrated Waste Management Act" means the California Integrated Waste Management Act of 1989 set forth in California Public Resource Code at Sections 40050 et seq., as it may be amended.

- C. "Carts" means the trash, recyclables or greenwaste containers that are provided to the residential property by the franchised haulers for the placement of trash, recyclable and greenwaste materials for collection, transport or disposal by the franchise hauler. Carts range in size from 32 gallon, to 64 gallon, to 96 gallon capacity. All carts bear the City of Elk Grove logo.
- D. "City" means the City of Elk Grove.
- E. "City Council" means the Elk Grove City Council.
- F. "City Manager" means the City Manager or his or her designee.
- G. "Commercial refuse" is any refuse collected in bins or drop boxes or compactors or the like, or as otherwise prescribed by the Department, but does not include refuse collected from which is commonly considered a "garbage can", regardless of size.
- H. "County" means the County of Sacramento.
- I. "Department" means the Sacramento County Department of Public works acting by, through and under the authority of the director of public works, unless the context indicates otherwise.
- J. "Department of Health" or "Health Department" means the Sacramento County Environmental Management Department.
- K. "Garbage" includes, but is not limited to, the following: waste resulting from the handling of edible foodstuffs or resulting from decay, and solid or semisolid putrescible waste, and all other mixed, nonrecyclable wastes which are generated in the day-to-day operation of any business, residential, governmental, public or private activity, and may include tin cans, bottles and paper or plastic food or beverage containers.
- L. "Gender". The masculine includes the feminine and neuter.
- M. "Owner" for purposes of this Article means the person listed as owner of record in the County Assessor's Records, or the record owner's successors in interest, such as an executor, beneficiary, or County probate administrator of an owner's estate.
- N. "Permittee" means any person holding a permit pursuant to the provisions of this Chapter or, in the case of a commercial permittee, a permit issued by the SWA.
- O. "Person" means any individual, firm, copartnership, joint venture, association, corporation, governmental agency, and the plural as well as the singular.
- P. "Refuse" includes rubbish, garbage, or any of them.

- Q. "Refuse collector" means the person who is permitted to engage in the collection and transportation of refuse.
- R. "Residential parcel" means an improved parcel of land, shown upon the County Assessor's most recent rolls, on which residential structures (single family, duplex, triplex, fourplex, and multi-family homes) are constructed and in which people can reside.
- S. "Rubbish" includes all the following, but is not restricted to, nonputrescible wastes, such as paper, cardboard, grass clippings, tree or shrub trimmings, wood, bedding, crockery, rubber tires, construction waste and similar waste materials.
- T. "Salvageable material" includes materials which can be separated from refuse and sold for reuse or recycling, but shall not include material disposed of at a landfill.
- U. "SWA" means the Sacramento Regional County Solid Waste Authority. (SCC 1044 § 2, 1986; SCC 517 § 2 (part), 1982.)
- V. "Solid waste" means solid waste defined in Section 40191 of the California Integrated Waste Management Act.
- W. "Solid waste handling" means solid waste handling as defined in Section 40195 of the California Integrated Waste Management Act, including, without limitation: (1) collection of residential garbage, refuse, bulky goods, electronic and other special waste and recyclables, and yard waste, and the transfer, processing, marketing and/ or disposal thereof, as the case may be; (2) development and implementation of the City's Source Reduction and Recycling Element and Hazardous Waste Element in accordance with the California Integrated Waste Management Act, Section 41000; and (3) disposal and recycling of household hazardous waste.
- X. "Truck" means any truck, trailer, semi-trailer, conveyance, vehicle or equipment approved by the Department used to collect or haul refuse.

#### **6.06.035 Rules and regulations.**

The Department and the Department of Health are authorized to make and enforce rules and regulations governing refuse generation, storage, recovery, accumulation, collection, transportation and disposal; types of refuse containers and vehicles used therefor; for the operation and maintenance of sanitary methods of refuse disposal; and for the effective administration of this chapter. All such rules and regulations shall be consistent with the provisions of this chapter and effective on the thirtieth day following filing thereof with the Clerk of the Board of Supervisors and serving thereof on each affected permittee.

Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the regulation by filing a written notice of appeal with the Clerk of the Board of Supervisors. The notice of appeal shall specifically identify the regulation or regulations from which appeal is taken and the reasons for the appeal. Upon receipt of such a notice, the Clerk shall schedule the appeal for a public hearing by the Board of Supervisors, notice of which is given in the manner prescribed by EGMC 6.06.060. At the conclusion of the public hearing the Board shall be vested with jurisdiction to deny the appeal or rescind or modify the determination by the Board shall be final. Any regulation from which an appeal is filed prior to the effective date thereof shall not become effective until the date of a determination by the Board of the appeal. Any regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision which rescinds or modifies the regulation shall apply prospectively.

It shall be unlawful and constitute a violation of the provisions of this section for any person to violate or fail to comply with the provisions or regulations issued pursuant to this section which are expressly authorized by other provisions of this chapter.

#### **6.06.040 Applicability of state regulations.**

The regulations of the State Solid Waste Management Board appearing in Chapter 3 of Division 7 of Title 14, California Administrative Code (commencing with Section 17200), shall be applicable within the county. All of said regulations shall be enforced in the same manner as provisions of this chapter, and violations of any of said regulations shall constitute violations of this section. This section shall be enforced by the Health Department.

#### **6.06.045 Federal and state standards.**

The generation, storage, recovery, collection, transportation, transfer and disposal of refuse and operation of refuse disposal areas (solid waste facilities) within the unincorporated area of the county, including the handling of special waste such as hazardous waste, shall be regulated by the provisions of Public Law 94-580 enacted by the United States Congress, the Necedly-Z'berg Solid Waste Management and Resource Recovery Act of 1972 (commencing at Section 66700 of the Government Code), the Z'Berg Kapiloff Solid Waste Control Act of 1976 (commencing at Section 66795 of the Government Code), the California State Solid Waste Management Standards, and all other applicable federal, state and local statutes, ordinances and regulations, as the same may be hereafter amended. This section shall be enforced by the Health Department.

#### **6.06.050 Enforcement.**

Except as otherwise expressly provided, the provisions of this chapter shall be enforced by the Department.

#### **6.06.055 Abatement proceedings.**

Any operation contrary to the provisions of this chapter or contrary to a refuse collection permit or the terms or conditions imposed therein is unlawful and a public nuisance, and either the Department or the Department of Health is authorized to commence in the name of the county actions or proceedings for the abatement and removal and enjoining thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such operation and restrain and enjoin any person, firm or corporation from so operating.

#### **6.06.060 Notices.**

Whenever a provision of this chapter authorizes or requires a public hearing to be conducted by the Board of Supervisors, notice of the time, date, place and purpose of the hearing shall be published at least once not later than 10 days in advance of the date of commencement of the hearing in a newspaper of general circulation which is published within the county, and shall be served upon each permittee who is affected by the hearing.

Any notice or other communication to a permittee which is authorized or required by this chapter shall be deemed served and effective for all purposes when reduced to writing and deposited in the United States Mail, postage prepaid, and directed to the latest address of the permittee shown in the county records pertaining to the permit.

### **Article II. Sanitation Regulations**

#### **6.06.100 On-site storage.**

Every owner, tenant or occupant of any single-family or duplex residential dwelling, every owner of multiple-family dwelling units containing three or more units, and every owner, operator or keeper of every business with a fixed location in the unincorporated area of the county which generates refuse shall provide and, at all times, keep within an enclosure or conveniently located near an enclosure or building, watertight containers, and shall cause to be deposited in such containers, and not elsewhere, all refuse accumulating on the premises. The containers shall have tightly fitted covers, and shall

not leak or permit the escape of odors. It shall be unlawful for any person to fail to comply with the requirements of this section.

**6.06.105 Collection or transportation prohibited.**

Except as authorized by EGMC 6.06.110, it shall be unlawful for any person to engage in the business of or otherwise organize, direct or sponsor the collection or transportation of refuse within the unincorporated area of the county without possessing a valid, unexpired and unrevoked county or SWA refuse collection permit or contract.

**6.06.110 Exempt collection or transportation.**

The following persons shall be authorized to organize, direct or sponsor the collection or transportation of refuse within the county, or collect or transport such refuse, without a refuse collection permit or refuse collection employee's permit:

A. A person or employee of a person who has entered into a contract with the United States or an agency thereof or the state of California or an agency thereof for the collection or transportation of refuse, when such person or employee collects or transports refuse on or from any federal facility or housing project property owned by the United States from any state facility operated by the state;

B. The United States, state of California, a city, a special district or other local public agency, or any employee or member of the armed forces thereof, when collecting or transporting refuse produced by operation of the public entity under a system of refuse collection of the public entity under a system of refuse collection and transportation operated and maintained by the public agency;

C. The owner, operator or occupant or employee thereof of a farm or ranch consisting of five acres or more, when transporting for off-site disposal refuse accumulated as a result of operation of the farm or ranch;

D. An owner or occupant of a residential unit, when collecting or transporting rubbish, not containing garbage, from his or her residential premises to a lawful point of disposal;

E. The following persons or entities:

1. Construction contractors or subcontractors (such as carpenters, masons, roofers, electricians and plumbers); and

2. Hired gardeners; and

3. Stores selling furnishings at retail (such as carpet, cabinets, mattresses, home appliances and furniture); and



4. Employees of the persons or entities described in subsections (E)(1) through (3) of this section, who incidentally transport any solid waste consisting of byproducts of their primary services, such as:

- a. Construction and demolition waste defined in EGMC 6.06.650(A)(4)(b) they generate in the course of providing construction or demolition services, but not construction and demolition waste they merely gather or collect from a construction and demolition site for transport;
- b. Yard waste they generate, including, without limitation, through trimming trees, shrubs and bushes; cutting grass; pulling weeds; and
- c. Old carpet, mattresses, cabinets, home appliances and furniture they remove following delivery of comparable new merchandise;

F. A person or employee thereof, when collecting or transporting dead animals, bones, meat scraps or food waste resulting from food processing plants for tallow or fertilizer, or other waste material to be used as raw material in manufacturing, or refuse for purposes of salvage; provided, that such persons shall reuse or recycle or cause to be reused or recycled all materials collected, and shall not transport any collected materials to a disposal site; and

G. An operator or employee thereof of one or more industrial plants which are under single ownership, when collecting or transporting wastes which cannot be handled by standard refuse collection equipment or which involve significant health, operating or handling hazards, including, but not limited to, rice hulls, tomato pulp, chemical residues, explosives, and other toxic, noxious or hazardous substances; provided, that all such wastes shall be deposited at an appropriate disposal area permitted pursuant to California State Solid or Hazardous Waste Management Standards.

Any transportation of garbage, refuse or rubbish authorized by this section shall be conducted in strict compliance with any and all requirements of this chapter relating to transportation and any regulations issued hereunder;

H. The owner, tenant, lessees or occupant of every improved parcel described in EGMC 6.06.120 who or which shall provide evidence satisfactory to City that the owner, tenant or occupant himself, herself or itself regularly transports at least once every week refuse generated at that parcel for disposal at a transfer or disposal facility permitted in accordance with law, which evidence includes, without limitation, invoices for disposal issued weekly by the transfer or disposal facility.

#### **6.06.115 Refuse removal.**

It is unlawful for the owner, occupant, tenant or lessee of any of the above-described premises to fail or neglect to provide for the removal of refuse by a permittee or the county as required by this section or regulations issued hereunder unless they qualify for the self-haul exception to mandatory collection described in EGMC 6.06.110(H).

#### **6.06.120 Mandatory service.**

A. Except as otherwise expressly provided by this chapter, the owner, tenant, or occupant of every improved parcel (parcel with one or more business and/or residential buildings approved for occupancy) located within the unincorporated area of the county shall subscribe to a refuse collection service provided by the county or provided by a county or SWA permittee or contractor operating pursuant to this chapter. Each business (DBA) and/or residential building with a separate address and each separate business unit and each separate residential unit (under separate rental agreement) with a common address located on such parcel shall subscribe to such service.

B. Exceptions to this mandatory service requirement are listed in EGMC 6.06.110, but in any case, any parcel owner of a five acre or larger parcel shall be automatically exempted from this provision. (An application for exemption shall not be required.)

C. The Department and the Department of Health may, in connection with refuse collection mandated by this section, adopt and issue from time to time pursuant to the provisions of EGMC 6.06.035, regulations which prescribe the type, capacity and number of containers, the permissible loaded weight of containers, the weight, size, and method of packaging nonputrescible wastes, and may designate the location of refuse collection containers and packages to be set out for collection; and the Department may issue regulations for remotely located accounts that provides for exempting, by the Department, any such remote account from the provisions of this mandatory service requirement or that provides for a special fee, set by the Department, for service provided to any such remote account.

#### **6.06.125 Accumulation on streets.**

No person shall accumulate or cause to be accumulated any refuse or leaves on or in any public street, gutter or sidewalk within the unincorporated area of the county, except in conformance with refuse collection regulations promulgated by the Department of Health pursuant to EGMC 6.06.035.

#### **6.06.130 Rubbish accumulation.**

No owner, tenant or occupant of any premises in the unincorporated area of the county, whether vacant or improved, shall allow any accumulation of rubbish to remain thereon

for longer than two weeks if such rubbish is within 400 feet of any dwelling unit or commercial building, nor for more than four weeks if beyond said distance, nor for any period of time if such rubbish is determined by the County Department of Health to constitute a nuisance and is directed to be removed.

**6.06.135 Construction and demolition refuse.**

Rubbish from building construction or demolition may be stored on-site and in the open for a period of not more than four weeks; provided, that such waste is not hazardous or noxious and does not constitute a nuisance. Rubbish which may be transported by the wind shall be placed in suitable containers daily and removed as necessary. Adequate storage capacity shall be provided to prevent littering of surrounding areas.

**6.06.140 Public agency exemption.**

The provisions of EGMC 6.06.115, 6.06.120 and 6.06.130 shall not be applicable to the United States, the state of California, the county, a city, a special district or any other local public agency with respect to the accumulation, collection or transportation of refuse resulting from operations of such agency.

**6.06.145 Departmental exemption.**

The Department of Health shall, upon application, grant a written exemption from the mandatory collection service requirements established by EGMC 6.06.120 for any property utilized for commercial purposes which does not generate refuse, and may grant such an exemption for any single-family residential dwelling or duplex dwelling (but not multiple-family dwelling units) if it determines that the occupant has made adequate and appropriate arrangements for the disposal of refuse and required subscription to collection service would constitute an unreasonable hardship or impractical burden.

**6.06.150 Use of containers.**

No person, other than the customer who has contracted for service with a permittee or a person with such customer's consent, shall deposit refuse into a commercial refuse bin, drop box or compactor placed in the unincorporated area by a permittee for the purpose of receiving refuse.

**6.06.160 Ownership of refuse and salvageable materials.**

It shall be unlawful for any person within the county, other than the county or a permittee authorized under this chapter or by the SWA, to collect or remove refuse or salvageable material placed by any person at a curb or in a container for collection by the county or the permittee.

### **6.06.165 Enforcement.**

EGMC 6.06.100, 6.06.115, 6.06.120, 6.06.125, 6.06.130, 6.06.135, 6.06.140, 6.06.145 and 6.06.150 shall be enforced by the Health Department.

## **Article III. Collection Permits – Right and Duties of Permittees**

### **6.06.200 Types of permits/contracts.**

As used in this chapter, the term “permits” or “refuse collection permit” shall be deemed to mean and include the following types of permits authorizing collection of refuse which may be issued pursuant to the provisions of this chapter:

A. A general refuse collection permit or contract, before March 1, 1992, shall authorize and require the permittee or contractor to engage in residential, commercial and industrial refuse collection as a service to the public either exclusively or nonexclusively within a defined geographic vicinity, in areas B and C or a portion of either or all such areas, as described by EGMC 6.06.220. After March 1, 1992, this section shall apply to residential refuse collection only.

B. A special refuse collection permit or contract shall authorize refuse collection and transportation for a specific and limited purpose as described by EGMC 6.06.215.

### **6.06.205 Entitlement of permits.**

Refuse collection permits shall not be deemed to create within the permittee any contractual rights under this chapter or any property or other vested right to perform the services authorized thereby or retain the permit, shall be revocable for cause pursuant to the provisions of this chapter, and shall be subject to revocation without cause during their terms pursuant to a determination by the Board of Supervisors to provide refuse collection services by means of another type of delivery system or service program, subject to such limitations upon the power of revocation as may be established by state law. During the term of any permit, the Board of Supervisors shall be authorized to expand or contract service requirements, regulate the terms and conditions upon which service is provided, and modify or add conditions upon which such permits are exercised.

### **6.06.210 Existing permits.**

All refuse collection permits in force on the date this chapter becomes effective shall remain in full force and effect, subject to the terms, conditions and requirements of this chapter. All such permits shall be amended for the purpose of effecting any and all changes required by this chapter and shall be designated either general refuse

collection permits or special refuse collection permits in accordance with the definitions prescribed by EGMC 6.06.200. Those existing permits which are designated general refuse collection permits shall be deemed to be exclusive (subject to the reserved authority prescribed by EGMC 6.06.250).

**6.06.215 Special refuse collection permit/contract.**

The Department shall issue a special refuse collection permit or contract authorizing, within areas A, B, and C, or parts thereof, the collection and transportation of refuse created by the person who is issued the permit/contract when the Department determines that by virtue of the nature of the refuse, the location of the place where it is generated or for other reasons, it is impractical for the applicant to subscribe to collection service with the holder of a general refuse collection permit/contract. The Department shall not issue the permit/contract unless it is satisfied that the applicant is capable of and will comply with all substantive regulation governing the collection and transportation or refuse established by and issued under this chapter. No such permit/contract shall be issued to allow collection and transportation of normal refuse generated by a household enterprise. Any such special refuse collection permit/contract shall specifically describe the collection and transportation activity authorized thereby, the term of the permit/contract shall be determined by the Department and the Department shall be authorized to grant the permit/contract subject to such terms and conditions relating to means of transportation, place of disposition or disposal, routes to be traveled, and other matters designed to ensure the safe and effective collection and transportation as it deems necessary in order to ensure compliance with the substantive regulations in this chapter and any regulations issued thereunder, any and all such conditions. The issuance of a contract or the application and permit issuance process, as well as term and renewal rights and privileges associated with the issuance of such, shall be detailed in rules filed by the Department with the Clerk of the Board pursuant to EGMC 6.06.035.

**6.06.220 General refuse collection permits/contracts.**

General refuse collection permits/contracts shall be issued by the Board of Supervisors within areas B and C or portions of either or all of such areas. Such permits/contracts shall limit the refuse collection operation of the permittee/contractor to a defined geographical area, either exclusively or nonexclusively, and shall be issued upon such terms and conditions prescribed by the Board relating to method of collection, place of disposal, transportation routes and other matters as are necessary to ensure compliance with regulations established by and issued under this chapter, and achievement of the objectives and purposes thereof. Any general refuse collection permit may be issued independently or in conjunction with a contract or vice versa between the county and the permittee establishing a contractual right to operate a refuse collection

service within the geographical area defined by the permit/contract, expressing conditions, terms and requirements relating to collection, transportation, and rates and such other matters as the Board deems necessary to protect the health, safety, and welfare. In the event of issuance of such a contract, with respect to a conflict between the substantive regulation established by or issued under this chapter and the express terms of the contract, the express terms of the contract shall prevail. Each permittee/contractor shall provide to the Department such information as the Department determines is reasonably necessary to facilitate effective administration of the permit/contract under the provision of this chapter, and the books, accounts and records of each permittee/contractor shall be subject to inspection by the Department or authorized representative thereof upon request.

#### **6.06.225 Geographical areas – General permits.**

In determining the geographical area within which a permittee under a general refuse collection permit is allowed to operate, the Board of Supervisors has in the past and shall in the future consider the following factors:

- A. The volume, density and distribution of commercial, industrial and residential development;
- B. Proximity to places of disposal;
- C. Relative efficiencies of potential alternative collection routes;
- D. Cost factors associated with collection, transportation, and disposal, and their relationship to rates and charges; and
- E. Such other factors as the Board deems relevant in relation to the efficiency, cost, safety and adequacy of the collection function.

#### **6.06.230 Modification of geographical areas – General permits.**

At any time, but not less frequently than the time of the hearings upon renewal of general refuse collection permits prescribed by EGMC 6.06.425, the Board may conduct a public hearing, notice of which is given in the manner prescribed by EGMC 6.06.060, for the purpose of determining whether the geographical areas which holders of general refuse collection permits are authorized and required to service should be modified. The determination to modify such geographical areas shall be based upon the factors prescribed by EGMC 6.06.225.

At the conclusion of the public hearing, the Board may order such modification of the geographical areas as, in its discretion, it determines appropriate. Any such modifications shall become effective as follows:

A. Immediately, or upon such other date as the Board may prescribe, with respect to the expansion of a geographical area which a permittee is authorized and required to serve;

B. Immediately, or upon such other date as the Board may prescribe, with respect to the reduction of a geographical area which a permittee is authorized and required to serve, if the Board finds, upon the basis of the record of the public hearing, that the services of the existing permittee are not in substantial compliance with the terms and conditions of this chapter, administrative regulations promulgated pursuant thereto, or the permit or that such services do not meet the quality or frequency of services required by the county in other areas not served by the permittee;

C. If the existing permittee has provided services for three years or less, immediately, or upon such other date as the Board may prescribe, with respect to the reduction of a geographical area the permittee is authorized and required to serve, and in the absence of the findings described by subsection (B) of this section; or

D. If the existing permittee has provided services for more than three years, not less than five years following the mailing to the permittee of written notice pursuant to the provisions of Section 4272 of the Health and Safety Code, with respect to the reduction of a geographical area the permittee is authorized and required to serve, and in the absence of the findings described by subsection (B) of this section.

No permittee or officer, employee or agent thereof, shall, at any time, collect refuse in the unincorporated area of the county outside the geographical limits fixed in the general refuse collection permit held by the permittee.

#### **6.06.235 Service – General permits.**

Each holder of a general refuse collection permit shall provide regular refuse collection service consistent with the collection requirements established by Article II of this chapter to each residential property for which subscription for service is requested, and with respect to which the charges for service are paid. The requirement of “regular refuse collection service” shall be deemed to include the duty to provide such service without undue interruptions caused by mechanical failures or other inadequacies of equipment, and the concomitant responsibility of a permittee to utilize equipment in quantities and of an age and quality adequate for the provision of reliable service and to provide preventive and repair maintenance of such equipment sufficient to ensure reliability. The provisions of this subsection shall be self-executing, and may also be implemented by administrative regulations pursuant to the provisions of EGMC 6.06.035 by the Department establishing specific standards consistent with the objects and purposes hereof.

#### **6.06.240 Rates and charges – General permits/contracts.**

Rates and charges for customer refuse collection service shall be determined as prescribed in the contract between the county and the service area contractor, or, in the absence of a contract, as otherwise prescribed by the Board.

#### **6.06.245 Billing procedures and practices – General permits.**

The Department may, pursuant to the provisions of EGMC 6.06.035, formulate and promulgate such rules and regulations relating to a general refuse collection permittee's billing frequency, deposit requirements, termination of service for failure to pay fees or charges, and other related matters as it determines necessary to adequately protect the public from unfair or unethical practices.

#### **6.06.250 Modification of exclusivity – General permits.**

A general refuse collection permit, whether or not issued in connection with a contract with the county providing for collection, which is designated "exclusive" may, during its term, be converted to, in whole or in part, and designated as a "nonexclusive" permit following a public hearing by the Board of Supervisors, notice of which is given in the manner prescribed by EGMC 6.06.060. A permit shall not, during its term, be changed from "exclusive" to "nonexclusive" status unless the Board, subsequent to the conclusion of the public hearing, finds, with respect to the geographical territory to which the nonexclusive designation applies, either:

A. That because of changing population trends or distribution, traffic conditions, the location of disposal sites, or other factors, service by an additional permittee would promote the public interest; or

B. That the existing holder of the permit is providing either inadequate service or service at rates or charges higher than reasonably necessary, and that a more adequate level or quality of service could be provided, or service could be provided at lower rates or charges, by two or more holders of general refuse collection permits than by the holder of the existing permit singularly.

Subsequent to a determination changing the status of a general refuse collection permit from "exclusive" to "nonexclusive" status, the Board of Supervisors may issue one or more additional general refuse collection permits for the geographical area pursuant to the provisions of EGMC 6.06.415.

"Exclusivity" as used in EGMC 6.06.200(A), 6.06.210, 6.06.220, and this section shall be deemed to constitute a designation made by the county solely for purposes of its convenience and to establish an orderly process for determination of exclusivity questions from time to time. A permittee shall not be deemed to have acquired a



contractual or any other right to exclusivity by virtue of such designation, and shall not, in making capital investments or other business or operational decisions, rely upon such designation. A determination to terminate “exclusive” status shall be vested within the sole discretion of the Board of Supervisors.

#### **6.06.255 Transferability.**

No general refuse collection permit shall be transferable without the express approval of the Board as evidenced by resolution or minute order spread upon its official minutes. A transfer of a permit, as regulated by this chapter, shall include the assignment of a permit by the person holding same to another person, or a change in ownership of the holder of a permit which consists of the transfer of five percent or more of the voting stock of a corporation which possesses an ownership or management interest in the holder of the permit, or the addition of or elimination of a partner, joint venturer or other owner of a permit, or a change in the ownership structure of the holder of a permit which changes or modifies the decision-making control over the holder of the permit.

#### **6.06.260 Procedure for transfer.**

The holder of a permit shall file a written application with the Department requesting approval of transfer of the permit not less than 90 days in advance of the proposed effective date thereof. The Department shall be entitled to request and receive such information and detail pertaining to the proposed transfer as it determines necessary for proper inquiry. The Department shall immediately report such a proposed transfer to the Sheriff, who shall perform such background investigation and analysis as the Sheriff deems necessary in order to verify the character, business responsibility, integrity, and reputation of persons who will assume ownership or control, or gain a voice in the control of the holder of the permit.

For general permits, not later than 15 days in advance of the proposed date of transfer, a public hearing shall be held by the Board with respect to the transfer, notice of which is given in the manner prescribed by EGMC 6.06.060. At the conclusion of the hearing, the Board shall approve the transfer if it finds:

- A. That the character, business responsibility and integrity of the person or persons who will acquire an ownership or controlling interest in the holder of the permit is not such as to threaten the health, safety, or welfare of the citizens of the unincorporated area; and
- B. That the proposed transfer will not result in a diminution or impairment of the ability of the holder of the permit to perform the duties prescribed by this chapter and comply with the regulations established by and issued hereunder.

#### **6.06.265 Signs.**

Each holder of a general refuse collection permit shall have permanently displayed in a prominent place on the exterior of each truck utilized in the collection or transportation of refuse under the permit and contains such information as is required by regulation of the Department of Health issued pursuant to the provisions of EGMC 6.06.035.

#### **6.06.270 Fees.**

Each holder of a general refuse collection permit or special refuse collection permit shall pay to the county fees in such amounts as are from time to time prescribed by resolution adopted by the Board of Supervisors. Revenue from such fees shall not exceed the costs incurred by the various Departments of county government in administering the provisions of this chapter.

Holders of such permits may be required to pay an annual fee, and the amount of such fee may be differentiated based upon the type of permit held, number of trucks utilized by the permittee under the permit, or other factors designed to reasonably apportion the costs of administration. Special administrative costs incurred in the processing and determination of applications for transfers of permits, applications for permits and appeals may be defrayed by special fees adopted in the manner prescribed above and imposed in connection with initiation of the proceedings with respect to which the administrative costs will be incurred.

Until revised by resolution adopted pursuant to this section, the annual permit fee for holders of general refuse collection and special refuse collection permits shall be \$410.00 per truck utilized in connection or transportation, payable in advance at such times as are prescribed by the Department.

#### **6.06.275 Truck requirements.**

The bodies of trucks used in the collection or transportation of refuse shall have beds of metal or of impervious material which can be cleaned, and shall otherwise be of a type approved by the Department of Health. The beds of trucks shall be cleaned and disinfected in accordance with the rules and regulations of the Department of Health. Adequate means to prevent refuse from escaping from trucks while collecting or transporting refuse shall be provided, and shall be subject to approval by the Department of Health.

The Department of Health shall, pursuant to the provisions of EGMC 6.06.035, be authorized to issue administrative regulations pertaining to specifications for trucks and containers, the cleansing and disinfection thereof, and other sanitary measures in connection therewith.

#### **6.06.280 Inspections.**

All trucks and containers used in the transportation and storage of refuse in the county shall be subject to inspection by the Department of Health for the purpose of determining whether or not the trucks and containers comply with sanitary requirements.

#### **6.06.285 Insurance.**

Each holder of a special refuse collection permit or a general refuse collection permit shall purchase and maintain during the term of the permit liability insurance covering vehicles utilized in the collection and transportation of refuse and other operations under the permit, of types and with such liability limits as are prescribed from time to time by the County Risk Manager. The county and, in their capacities as such, its officers, agents and employees, shall be named as primary insureds in such policies. All such policies shall contain a provision requiring that written notice be mailed to the Department by the insurer not less than 30 days in advance of the cancellation, modification or reduction of the insurance, or failure to renew such insurance, whether by the insurer or insured, and whether for nonpayment of premium or otherwise. Certificates of insurance shall be filed with the Department prior to the issuance of any permit.

Any act, omission or circumstance which results in the holder of a permit being out of compliance with the requirements of this section during the term of the permit shall constitute grounds for the immediate suspension of the permit by the Department, without advance notice or hearing, pending reestablishment of compliance by the permittee with the requirements hereof.

#### **6.06.290 Office required.**

Every holder of a general refuse collection permit shall at all times maintain a central office within the county or within the metropolitan area immediately adjacent to the county where the agent, servant or representative of the permittee can be reached by telephone 9:00 a.m. through 5:00 p.m., Mondays through Fridays, legal holidays excepted. Such office shall have a local Sacramento County telephone number so that customers served by the permittee may contact the permittee without necessity of making a long distance telephone call.

#### **6.06.295 Garbage disposal.**

All garbage collected by the holder of a special refuse collection permit/contract or a general refuse collection permit/contract within areas A, B, and C shall be disposed of at a county disposal facility or such other site as directed by the Department. It shall be

unlawful for the holder of such a permit/contract to dispose of such garbage at a location other than that prescribed by or authorized pursuant to this section.

**6.06.300 Refuse disposal restrictions.**

It shall be unlawful for any person:

A. To operate a garbage disposal area in area A; provided, that the county shall not be deemed to be a person within the meaning of this section; or

B. To dump any refuse upon, or permit the same to fall upon, any property, road or highway other than the areas designated by this chapter for the disposal or dumping of refuse. The provisions of this subsection shall be enforced by the ***Health Department***.

**Article IV. Issuance – Renewal – Revocation – Collection Permits**

**6.06.400 Issuance of special refuse collection permits.**

Any person desiring to obtain a special refuse collection permit shall file an application with the Department on a form prescribed by the Department and provide such information as the Department requires, including the following:

A. The name and address of the applicant and of the party in whose name the permit is to be issued as holder;

B. Identification of the location of the disposal or recovery area, and certification that the applicant has arranged for the disposal or recovery at the area identified;

C. A specific statement of the reason for the application and description of the collection and transportation operation which is proposed to be conducted thereunder;

D. The names and residential addresses of each employee, if any, which the applicant will utilize in conducting the collection and transportation function authorized by the permit; and

E. A specific description of all equipment including vehicles to be utilized in the conduct of the collection and transportation function authorized by the permit.

If the Department finds that the statements in the application are true and that the applicant is capable of complying with the requirements established by this chapter and any regulations issued thereunder, the Department shall issue the permit subject to such conditions as the Department determines are necessary to promote the objects and purposes of this chapter.

#### **6.06.410 Appeals.**

Any person aggrieved by the refusal of the Department to issue a special refuse collection permit, the renewal thereof, or by the conditions of such a permit, may file a written notice of appeal with the Clerk of the Board of Supervisors. The Clerk shall schedule a hearing before the Board not later than thirty (30) days following the filing of the notice of appeal, and shall give written notice of the time, date and place thereof to the appellant and other interested parties. Following the hearing, the Board shall decide whether the determination by the Department from which the appeal is taken should be affirmed, modified or reversed, and the decision by the Board shall be final.

#### **6.06.415 Proposals for general permits.**

Except with respect to the renewal of an existing permit, general refuse collection permits shall be issued pursuant to the submission of competitive proposals. Notice soliciting competitive proposals which identifies the time, date and place for the receiving and opening of sealed bids shall be published once a week for two successive weeks in a newspaper of general circulation published and circulated within the county, the first notice to be published not later than four full weeks prior to the date for submission of the bids. The notice shall also contain a general description of the area to be served, and reference to a place where further information concerning the permit or permits to be issued may be obtained. Minimum qualifications for applicants relating to such matters as the nature and extent of equipment to be utilized in operations, the programs for the maintenance and repair of equipment, and the nature, volume and extent of services to be rendered may be established by the Board prior to the solicitation of proposals.

Proposals shall include such information as is prescribed by the Department, including the following:

- A. The name and business address of the applicant, and the firm in whose name the permit would be issued as holder;
- B. If the holder of the permit would be a corporation, the address of the home office of the corporation and name of the state in which the corporation was incorporated; and if the holder is not a corporation, or is owned partially by a corporation and other parties, the name and address of each corporation (including address of the home office and designation of state of incorporation), and of each sole proprietor, partner, joint venturer and other person or entity possessing an ownership interest in the holder;
- C. A plan of operation for exercise of the permit during the term thereof showing, by year, the area or areas in which the applicant would emphasize service, the types of

services which would be provided, the number of accounts planned to be serviced, and the methods of providing service. This plan may be provided by the county at its option;

D. The proposed actual charges for services and proposed actual adjustments of charges during the term of permit;

E. An inventory of all trucks, compactors, bins and other equipment owned or leased by the applicant proposed to be utilized in the conduct of operations under the permit, together with such description thereof as the Department requires; and

F. A list of all permits or franchises authorizing refuse collection held by the applicant in other jurisdictions, together with a detailed description of the nature and extent of the applicant's business activities, its past experience with respect to refuse collection, and such other information as the applicant deems relevant for consideration in connection with the application.

Each applicant submitting a proposal shall, within seven (7) days following the deadline for submission of applications, submit such information to the Sheriff as the Sheriff may require pursuant to the provisions of EGMC 6.06.435.

The Department shall conduct such examination and investigation of each applicant as is required to enable the Department to rank the candidates, and shall formulate, prepare and present to the Board a written recommendation ranking the highest applicants in order of preference and explaining the reasons therefor.

If the Board elects not to issue a permit, but rather elects to enter into a contract or a franchise or some other service agreement, then the Department shall expand the proposal requirements to meet the objectives of such action.

#### **6.06.420 Issuance of general permits.**

Upon receipt of the recommendation by the Department, the Clerk of the Board of Supervisors shall schedule a public hearing for the purpose of selecting the permittee or permittees, notice of the time, place and date of which shall be mailed to each applicant and given in the manner prescribed by EGMC 6.06.060.

In selecting the permittee or permittees for a general refuse collection permit the Board shall consider the following factors:

A. The business responsibility of the applicant and character thereof, together with that of any and all persons associated in business with the applicant, and the views of the Sheriff thereon;

- B. The breadth, adequacy and efficiency of the services proposed by the applicant as identified by the plan of operation contained in the proposal, including proposed actual rates and charges;
- C. The relative benefit to the public of the operational plans included with the proposals;
- D. The past experience in refuse collection and sufficiency of services provided by applicants in other jurisdictions; and
- E. Such other related factors as the Board determines to be relevant.

**6.06.421 Terms and renewal of general permits.**

The terms and renewal conditions of a general permit shall be established by the Board and specified in the permit at the time of issuance. The two general permits existing on the effective date of the ordinance codified in this chapter shall terminate on March 1, 1990, and such existing permits contain no right of renewal.

**6.06.422 Issuance and renewal of special refuse collection permits.**

Special refuse collection permits shall be issued and renewed by the Department to an applicant who qualifies under criteria filed by the Department with the Clerk of the Board of Supervisors.

**6.06.425 Application for Sheriff's review.**

A. No general refuse collection permit shall be issued or renewed unless the Sheriff has reviewed the application or proposal therefor as provided in this section. The Department shall refer all applications for collection permits or renewals of collection permits pursuant to this chapter to the Sheriff who shall make such investigation of the applicant as the Sheriff deems necessary in order to determine whether the applicant's character or the business responsibility of the firm he represents is satisfactory. The requirements of this section apply to all pending or future applications or proposals for issuance or renewal of such permits pursuant to this chapter. The Sheriff's investigation may include, but is not limited to, obtaining the fingerprints and a photograph of the applicant, or any other person connected with the firm which the applicant represents, and the obtaining of reports from the state and federal Departments of Justice and reports from any other appropriate sources.

B. The applicant or party submitting a proposal for a permit or renewal of a permit shall file with the Sheriff a verified statement setting forth the name and address of every person, firm or organization who has an interest in or who has invested in the operation or management of the applicant's business or who is an officer or director thereof. The statement shall specify in detail the nature of each such interest or investment which is

held or controlled directly or indirectly by any person, firm or organization not actively involved in the conduct of the applicant's business. If the applicant is a partnership, a copy of the articles of co-partnership shall be filed with the statement. During the application or proposal period and during the full term of any permit, all information contained in the statement shall be kept up-to-date by the applicant, who shall file a new verified statement within 48 hours of any change, indicating in detail the nature of any change in the information. In the event the applicant or party submitting a proposal is a corporation whose stock is traded on a national exchange, the names of persons owning or controlling less than one-half of one percent of the outstanding shares need not be listed in the application and transfers of less than one-half of one percent of the outstanding shares need not be reported unless such a transfer results in the transferee owning or controlling one-half of one percent or more of the outstanding shares; provided, however, that upon reasonable request of the Sheriff, the applicant or party submitting a proposal shall provide a list of all stockholders or shall provide to the Sheriff the source material from which the names of such stockholders may be readily obtained.

#### **6.06.430 Sheriff's determination.**

The Sheriff shall evaluate such application or proposal to determine whether the operation of the business which the applicant or party submitting the proposal represents would involve an unreasonable risk to the health, safety or general welfare of the public. In making such determination the Sheriff shall consider the character of the applicant or party submitting the proposal and each director, officer, manager and other person who exercises policy control over the operations of the applicant or proponent, the business responsibility of the firm which the applicant or party submitting the proposal represents, and the manner in which the firm intends to conduct its business.

The Sheriff shall notify the Department of the results of his investigation of each application or proposal. If the Sheriff recommends disapproval of the application or proposal, his reasons for disapproval shall be specified in writing. He shall forward a copy of the statement of reasons to the

Department and shall provide a copy to the applicant or party submitting a proposal.

#### **6.06.450 Revocation – Policy.**

A general refuse collection permit may be revoked during the term thereof pursuant to a determination by the Board to provide for a new, different or other method of collecting and transporting refuse within the area to which the permit applies, subject to such advance notice thereof as may be required by the laws of the state of California.



Prior to the issuance of such notice, the Board shall conduct a public hearing respecting the question of revocation and the new, different or other method of collecting or transporting refuse within the area. Notice of the hearing shall be given in the manner prescribed by EGMC 6.06.060. No public hearing shall be required for revocation of a special refuse collection permit.

**6.06.455 Revocation – Cause.**

A special refuse collection permit or general refuse collection permit may be revoked during the term thereof upon any one or more of the following grounds:

- A. Violation by the permittee of any of the terms, conditions or requirements of this chapter;
- B. Violation by the permittee of any administrative regulation promulgated pursuant to the provisions of this chapter, or of any state or federal law compliance with which is mandated by this chapter; or
- C. Violation by the permittee of any of the conditions upon which the permittee is issued.

**6.06.460 Commencement – Revocation for cause.**

Revocation proceedings pursuant to the provisions of EGMC 6.06.465 shall be commenced by a written statement of charges prepared by the Department ordering revocation. The statement shall describe the acts or omissions upon which the charges are founded, identify the appeal rights of the permittee, and shall be either personally delivered to the office of the permittee as identified in the application for the permit or mailed thereto pursuant to EGMC 6.06.035.

The revocation shall become effective 15 days following the date of service of the statement of charges, unless the permittee files by the fifteenth day a written appeal of the recommendation in the office of the Clerk of the Board of Supervisors. The written appeal shall contain a statement of admission or denial of the allegations of acts or omissions contained in the statement of charges and any other matter to be raised by way of legal or other defense to the revocation proceedings.

If an appeal is filed within the time and in the manner specified above, the revocation shall not become effective unless it is ordered after a hearing under EGMC 6.06.465.

**6.06.465 Hearing – Revocation for cause.**

If an appeal is filed within the time and in the manner required by EGMC 6.06.470, the Board of Supervisors shall determine whether the hearing thereon will be conducted by the Board or a Hearing Officer appointed by the Board. Any Hearing Officer appointed

by the Board shall be licensed to practice law within California, and shall not be an officer or employee of the county. The Department shall carry the burden of proof. The right of direct and cross examination shall be permitted. Witnesses shall be sworn, but formal rules of evidence applicable to the trial of civil or criminal proceedings within the courts of this state shall not be applicable. At the conclusion of the hearing, any determination to revoke the permit shall be accompanied by findings of fact and conclusions. With respect to a hearing by a Hearing Officer, the determination to either revoke the permit or dismiss the proceedings shall be accompanied by findings of fact and conclusions, and such determination, findings and conclusions shall be in the form of a recommendation to the Board.

With respect to a hearing conducted by a Hearing Officer, the Board shall schedule consideration of the recommended determination, findings and conclusions. A hearing may be conducted by the Board, but shall not be required. The Board may, based upon a review of the transcript of the hearing by the Hearing Officer, modify the determination, findings or conclusions recommended by the Hearing Officer, or may make such modification pursuant to a new hearing conducted by the Board or the receipt of supplementary evidence.

In lieu of revocation of a permit, the Board may add specific conditions in the form of requirements or prohibitions to the permit, providing a time within which compliance therewith is to be achieved, and providing for revocation in the event of violation of such conditions pursuant to such procedure as may be established by the conditions.

## **Article V. Residential Solid Waste Handling Service Charges**

### **6.06.500 Purpose.**

The purpose of this article is to provide for the establishment, billing and collection of service charges for solid waste handling, referred to in this article as “service charges.”

### **6.06.510 Level of service charges.**

The City Council may by resolution establish and revise from time to time the amount of service charges. The amount of service charges shall be based upon the property type, solid waste handling level as established by the size of cart requested by the resident, and any other factors determined by the City Council to produce an equitable apportionment of the City’s costs of providing residential solid waste handling.

#### **6.06.520 Owner liability for service charges.**

- A. **Mandatory Service Charges.** All owners of residential parcels must pay to the City the service charges described in this Article, unless an exemption as provided in this section and in the City Garbage Collection Exemption Policy applies.
- B. **Exemptions.** An owner may apply for one of the service fee exemptions provided in this section by submitting a completed "Request for Garbage Collection Exemption" form, which can be obtained from the City Utility Billing Department. Within 30 days of receipt of a complete application, the application shall be reviewed and approved or denied by the City Manager and/or his or her designee at his sole discretion, according to the terms of the City Garbage Collection Exemption Policy. The City Manager or his or her designee shall notify the owner of record if the billing is changed to comply with such a request. Until the owner receives notification that the City has approved the exemption application, the owner of record shall remain liable to pay city garbage collection services and any delinquent fees. The City may also grant temporary exemptions on its own initiative without owner application under "1. Vacancy" and "4. Temporary Exemptions" in this subsection below.
1. **Vacancy Exemption.** Owners of unoccupied residential parcels may seek an exemption from service charges for a stated period of absence or vacancy in accordance with the City's Garbage Collection Exemption Policy. Owners must give the City written notice within 30 days after the earlier of (1) re-occupation of residential parcels or (2) re-connection with water, sewer, electrical or gas utilities. The City may exempt an individual, named owner or a described group of owners (such as banks holding title to foreclosed residential parcels) from the obligation to pay service charges on the owner's or owners' respective residential parcel for a stated period or successive periods of vacancy following determination by the City Manager that the owner's or owners' specific circumstances warrant a vacancy exemption.
  2. **Self-Haul Exemption.** Owners may qualify to collect or transport refuse by means other than City-provided services if they satisfy the criteria in Section 6.20.110 and the criteria in the City Garbage Collection Exemption Policy.
  3. **Secondary Structure Exemption.** Owners of residential parcels bearing more than one residential structure may request to exempt the secondary structure from City garbage collection service charges if they satisfy the criteria in the City Garbage Collection Exemption Policy.
  4. **Temporary Exemption -- Unusual Circumstances.** An owner who does not qualify for the exemptions listed herein, may seek review by the City Manager, who shall decide on a case-by-case basis whether the owner's specific

circumstances warrant a temporary exemption, and shall specify a limited period of duration for the exception, not to exceed one year. The City Manager may decide on a case-by-case basis, on his or her own initiative without application from an owner or owners, that specific circumstances warrant granting an individual, named owner or a described group of owners a temporary exemption for a specified, limited period of duration, not to exceed one year.

5. Foreclosure/Distressed Property. Upon notification that a property may be under foreclosure action, City Staff will request visual inspection of the property by Allied Waste or the City's Neighborhood Services department. Once it is determined that the property is vacant, the City will arrange for the collection of all carts located at the property and billing will be discontinued for these services. If carts cannot be collected because they are inaccessible, the billing and the servicing at the property will be terminated without collection of the actual carts.

#### **6.06.530 Commencement of service charges.**

The Administrative Services Director and/or his or her designee will commence billing on the earliest of the following dates:

- A. Immediately following a request for solid waste or other utility services to the residential parcel or written notice that the residential parcel has become occupied or reconnected to utilities in accordance with EGMC 6.06.520(B);
- B. Immediately upon written notification by the owner or occupant of the residential parcel to the Administrative Services Director that construction of a new, renovated or repaired structure on the residential parcel is completed;
- C. The date 90 days after the residential parcel is physically connected to the public sewer system; and
- D. That the residential parcel is considered by the Administrative Services Director to be suitable for occupancy, based on a reasonable interpretation of information obtained from public records or field inspection.

#### **6.06.540 Form of bills.**

- A. Combined Utility Bill. The City may bill and collect service charges together with rates, fees, tolls and charges of any other City-administered utility, as authorized by the Administrative Services Director.
- B. Bill Addressee. The City will bill service charges to the owner of record of the parcel as of the commencement date provided in EGMC 6.06.530 or to a designee. The bill may also be sent to the tenant(s) of the property, as permitted in subsection (C) of this

section; all requests to bill a party other than the owner of record must be made in writing to the Administrative Services Director by both the owner of record. The Administrative Services Director shall either approve or deny such requests at his or her sole discretion. The Administrative Services Director shall notify the owner of record if the billing is changed to comply with such a request and the owner of record shall remain liable for any delinquent fees.

C. Multiple Service Addresses on Single Residential Parcel – Tenants. The City may issue a single, consolidated bill for each residential parcel, even if more than one residential structure is located on that residential parcel, or the City may issue separate bills to the occupant of each structure on a residential parcel that receives separate service. The City will issue a single consolidated bill for each residential parcel that has a building or buildings with multiple units, such as apartment buildings, unless the owner of that residential parcel and the building(s) provides written authorization and all requested information to the City, and the Administrative Services Director agrees to issue bills to individual tenants located in the building(s). Despite the name on the bill, however, the owner of the residential parcel remains liable for payment of those bills as provided in EGMC 6.06.520.

D. Combined Bills. Upon request of the owner of two or more residential parcels or addresses and approval of the Administrative Services Director, which approval may be subject to specified conditions, the City may combine service charges for those residential parcels in one bill.

E. Copies to Owners. Owners of residential parcels may request the City to mail, at the owner's cost, copies of all bills to occupants or tenants residing in residential structures or buildings that receive service.

#### **6.06.550 Billing adjustments.**

A. Timing. The Administrative Services Director may adjust service charges on any bill in the manner the Administrative Services Director deems appropriate in accordance with subsection (B) of this section. The Administrative Services Director will credit any amount paid in excess of the correct service charge against the service charge due and payable on the next succeeding bill. The Administrative Services Director will add any deficient amount to the service charge due and payable on the next succeeding bill. The Administrative Services Director will not adjust any amount for a billing discrepancy with respect to either excess or deficient payments that occurred more than three years prior to the date that the Administrative Services Director determines that a billing discrepancy exists.

B. Bases. The Administrative Services Director may adjust bills under any of the following circumstances:

1. Errors or Updates. To correct an error in a bill or billing cycle, or to add late fees and overdue interest charges;

2. Exemptions. If the bill addressee, in accordance with EGMC 6.06.540(B), submits documentation satisfactory to the Administrative Services Director that owners of the billed residential parcel qualify for one of the exemptions provided in this article; or

3. Credits. To issue a credit in amounts equal to the service charges collected by the City during periods in which a residential building was unoccupied because fire, damage, or similar causes rendered it uninhabitable in accordance with the city code or other applicable law, if the person paying the service charges submits documentation satisfactory to the Administrative Services Director.

C. Requests. The bill addressee in accordance with EGMC 6.06.540 may submit to the Integrated Waste Program Manager an administrative appeal requesting a bill adjustment and stating grounds therefor. The Integrated Waste Program Manager's determination with respect to any requested adjustment is final and conclusive.

#### **6.06.560 Due date and delinquency.**

The City may bill the service charges monthly, bimonthly, quarterly or annually, in advance or arrears, as determined by the Administrative Services Director. The City finance department will collect bill payments. The service charges are payable on presentation of the bill and are due 45 days after the date of the billing statement (or, if service charges are billed monthly, 21 days after the date of the billing statement), and are delinquent if payment is not received by the due date. If due date falls on a Saturday, Sunday or legal holiday on which City offices are not open to conduct business, it will be extended to the next regular business day on which City offices are open to conduct business. The bill must clearly state the due date. Payments made by mail must be received no later than close of business for City offices on the due date. The Administrative Services Director may provide for payments to be made in person on or before the due date between posted hours on posted days, at specified locations. If a customer does not enclose full payment for all the service charges on the consolidated utility billing statement, the City will allocate the amount paid to each service charge proportionally.

#### **6.06.570 Late charges and overdue interest.**

If any service charge becomes delinquent as described in EGMC 6.06.560, a late charge of 10 percent of the amount that has become delinquent will accrue thereon. The delinquent amount and late charge will thereafter accrue added overdue interest equal to the lesser of one and one-half percent per month and the maximum amount permitted by law until paid or placed on the annual tax bill in accordance with EGMC

6.06.580(C). If the delinquent amount and late charge are placed on the annual tax bill, the total delinquent amount plus all penalties will incur an additional 10 percent lien penalty.

**6.06.580 Collection of delinquent accounts.**

A. City's Collection Options. The City may, in its discretion, take the following actions to collect delinquent service charges, late charges and overdue interest that are due with respect to a residential parcel:

1. Impose a lien on the residential parcel as described in subsection (B) of this section;
2. Impose a lien on the residential parcel as described in subsection (C) of this section and collect the amounts due on the tax roll;
3. Institute suit in a court of competent jurisdiction; and
4. Take any other action permitted by law or equity.

B. Lien for Delinquency.

1. Optional Late Notice. If service charges become and remain delinquent and unpaid for 30 days, the City may give the assessed person a notice of the delinquent service charges stating the City's authority to impose a lien on the residential parcel.

2. Lien.

- a. The City shall send a delinquency notice to the assessee shown on the County Assessor's latest equalized assessment roll whenever delinquent and unpaid fees remain delinquent and unpaid for 60 days. The notice will contain a detailed description of the amount owed; the schedule of late service charges and overdue interest; the lien procedure; and any associated costs and administration fees.
- b. The garbage collection service fees and any penalties, costs or fees levied pursuant to this article shall constitute a lien upon the parcel subject to the fee, as provided for pursuant to Section 5473.11 of the Health and Safety Code, if the fee remains delinquent for a period of 60 days and the City has notified the assessee of the parcel shown on the latest equalized assessment roll of the delinquent fees and the lien provided by this section.
- c. If delinquent service charges are not paid within 20 days after the delinquency notice is postmarked, the City will record with the Sacramento County Clerk-Recorder a certificate that specifies that service charges are delinquent on the residential parcel.

d. The lien shall attach upon recordation of the certificate and continue in effect for three years from the time of recording, unless sooner released or otherwise discharged.

C. Collection of Fee with General Taxes. Any lien amount imposed for service charges that remain delinquent and unpaid for 60 days as provided in subsection (B)(2)(b) of this section shall be collected as a special assessment on the residential parcel pursuant to Sections 38790.1 and 25831 of the Government Code.

1. The City may charge administrative processing fees to offset the costs incurred by the City in administering the provisions of this section, including court costs. The amount of any costs, fees and penalties imposed pursuant to this section shall be established by resolution of the City Council.

2. The City Council will cause to be prepared annually a report of delinquent service charges with respect to all residential parcels, including all late charges, interest and administrative processing fees that have accrued against residential parcels plus any county fees for processing and collecting the delinquencies on the tax roll.

3. The City Council will fix a time, date and place for hearing the report and any objections or protests thereto. The City Council will cause notice of the hearing to be mailed to the property owners listed on the report not fewer than 10 days prior to the date of the hearing.

4. At the hearing, the City Council will hear any objections or protests of property owners liable to be assessed for delinquent service charges. The City Council may make such revisions or corrections in the report as it deems just, after which, by resolution, the report will be confirmed. The decision of the City Council will be final and conclusive.

5. Upon confirmation by the City Council in accordance with subsection (C)(4) of this section, delinquent service charges will constitute special assessments against the respective residential parcels and a lien thereon for the amount of the delinquent service charges.

6. A certified copy of the confirmed report must be filed with the County Auditor/Controller for the amounts of the respective special assessments against the respective residential parcels as they appear on the County Assessor's latest equalized assessment roll.

7. A lien attaches upon recordation in the office of the Sacramento County Clerk-Recorder of a certified copy of the City Council's resolution of confirmation. The special assessment may be collected at the same time and in the same manner as ordinary



county property taxes are collected and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for those taxes. All laws applicable to the levy, collection and enforcement of county *ad valorem* property taxes are applicable to such assessment, except that, if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the lien that would otherwise be imposed hereby will not attach to such real property and the delinquent service charges, as confirmed, relating to the residential parcel will be transferred to the unsecured roll for collection.

**6.06.590 Administrative appeal.**

A. Any owner who disputes the amount of the solid waste service fee charged to his parcel, the charges for extra services, any adjustment proposed by the Administrative Service Director, or any other determination affecting the property made by or on behalf of the City pursuant to this chapter may petition the Integrated Waste Program Manager for an administrative decision. A petition may be filed only once in connection with the issue or issues presented in the petition, except upon showing of changed circumstances sufficient to justify the filing of such additional petition.

B. Any such petition shall be in writing, signed by the owner under penalty of perjury and filed with the Integrated Waste Program Manager. The petition shall include the following information: (1) a complete description of the factual basis for the appeal; (2) the legal basis for the appeal; (3) the remedy sought by the appellant; (4) any and all efforts by the owner to comply with the City's requests for payment; and (5) the petitioner's/owner's accurate phone number and address to which the City can successfully mail its written decision. Within 60 working days after receipt of the petition, the Integrated Waste Program Manager shall mail his or her written decision to the address provided by the petitioner/owner.

C. The written decision of the integrated waste program shall be the final decision of the Waste Management Department, and shall be considered "issued" as of the date of postmark by the City.

D. An owner may appeal the Integrated Waste Program Manager's final issued opinion within 15 business days after issuance, pursuant to Chapter 1.11 EGMC.

## **Article VI. Commercial Solid Waste Handling Requirements**

### **6.06.600 Establishment of commercial refuse hauler fees.**

A. Commercial Hauler. The following persons are referred to in this article as commercial haulers:

1. Each person that is obligated under EGMC 6.06.105 to secure a general refuse collection permit described in EGMC 6.06.200, as may be amended or replaced, or who must secure a license or permit issued by the City; and
2. Each person that is obligated under Section 1.01.030 of Ordinance No. 16 of the Sacramento Regional County Solid Waste Authority or under a substantially similar provision to secure a franchise granted by the Solid Waste Authority; and
3. Each person who collects solid waste (as defined in AB 939) from either:
  - a. Premises other than single-family, duplex and triplex premises within the City; or
  - b. Fourplex and larger multifamily premises in the City, which do not choose to subscribe to services with carts from the City's residential solid waste commercial hauler, but rather with bins or roll-off boxes from that person; and
4. Each person that removes construction and demolition waste from premises in the City, regardless of the type of collection containers (including, without limitation, pens, drop boxes, debris boxes, roll-off boxes) or transport vehicles (including, without limitation, pickup, garbage or flatbed trucks), where "construction and demolition waste" is defined in EGMC 6.06.650(A)(4)(b); and
5. Each person who supplies goods (including, without limitation, containers and vehicles) or services (including, without limitation, account solicitation, billing, invoicing, subcontracting, brokering, disposal or any solid waste handling services) to persons described under subsections (A)(1) through (4) of this section, whether pursuant to arrangements that are formal or informal, written or otherwise.

B. Obligation.

1. Amount. Commercial haulers must pay to the City the commercial refuse hauler fees on gross receipts in the amount prescribed from time to time by resolution of the City Council and in accordance with the terms of this section.
2. Definitions.
  - a. "Gross receipts" includes all, total, aggregate, whole or entire revenue and income received by the commercial hauler for services rendered within the City without

offsets or deductions such as costs, expenses, charges, losses, fees (except for the commercial refuse hauler fee), fines or penalties, and without regard to the identity of the customer to which that revenue or income is attributable, whether federal, state or local governmental entities, including, without limitation, school districts.

“Gross receipts” excludes all that revenue and income for services comprised of the collection of source-separated materials if the collection of those source-separated materials does not require that commercial hauler secure a general refuse collection permit described in EGMC 6.06.200, or who must secure a license or permit issued by the City.

- b. “Source-separated materials” means materials separated at the point of generation from mixed solid waste, refuse or rubbish which contain less than:
  - i. Ten percent of total weight in contaminating solid waste that is not recyclable commodities (including, by example, papers, glass, metals and wood), and
  - ii. Thirty percent of total weight in contaminating solid waste that is not inerts, and
  - iii. In both subsections (B)(2)(b)(i) and (ii) of this section including no more than one percent of total weight in putrescible solid waste as part of the contaminating solid waste.

For purposes of the definition of “source-separated materials,” “inerts” means solid waste and recyclable materials that are source-separated and do not contain hazardous waste (as defined in Title 22, Section 66261.3 et seq., CCR), or soluble pollutants at concentrations in excess of applicable water quality objectives, none of which solid waste, recyclable materials or soluble pollutants contain putrescible wastes, including, without limitation, concrete (that may have steel reinforcing bar embedded in the concrete), fully cured asphalt, glass, plastics, fiberglass, asphalt or fiberglass roofing shingles, brick, slag, ceramics, plaster, clay and clay products and any other materials determined by the California Integrated Waste Management Board to constitute inerts; further including all materials determined by the State Water Resources Control Board to constitute inerts, such as treated industrial wastes, dewatered bentonite-based and drilling mud; but excluding gravel, rock, soil, sand and similar materials as they exist in their natural state, whether processed or not, that have never been used in connection with any structure, development, grading or other human purpose.

3. Disputes. At direction of the City, commercial haulers claiming that specified gross receipts are excluded from calculation of commercial refuse hauler fees will:

- a. Sort source-separated materials or characterize or analyze those source-separated materials by weight in a manner satisfactory to the City in order to establish to

satisfaction of the City that they are defined “source-separated materials” described in the definition thereof in subsection (B)(2)(b) of this section; and

- b. Demonstrate to the satisfaction of the City that the collection of those source-separated materials does not require that the commercial hauler secure a general refuse collection permit, license or permit as described in the definition of “gross receipts” in subsection (B)(2)(a) of this section.

Disputes over whether gross receipts are excluded from calculation of commercial refuse hauler fees will be resolved by the City’s Deputy City Manager or his or her respective designees. The Deputy’s decision may be appealed to the City Manager, explaining the basis of the appeal, within 10 days of the Deputy’s decision and the prepayment of the City’s projected costs and expenses of conducting the appeal, including related staff time and fees of consultants to the City. The burden of proof will be on the commercial hauler challenging the Deputy’s decision. The City Manager or his or her designee will hear the appeal and render a written decision that will be final. The City will return any excess prepayments to the commercial hauler within 30 days of rendering the written decision or the commercial hauler will reimburse the City additional costs and expenses within 30 days of the City’s documented request therefor.

4. Customer Invoices. Commercial haulers may not separately itemize commercial refuse hauler fees or otherwise identify them on bills, invoices or other documentation that the commercial hauler distributes to customers or the general public.

C. Time and Manner of Payment. Commercial haulers must pay the commercial refuse hauler fees monthly, due and payable on or before the first day of the second month immediately following the month in which they received gross receipts from their customers, commencing on the day the ordinance codified in this article and its accompanying resolution take effect. For example, for gross receipts received in July, commercial haulers must remit the corresponding monthly commercial refuse hauler fee on or before September 1st. Commercial haulers must pay the commercial refuse hauler fees to:

City Finance Department

City of Elk Grove City Hall

8400 Laguna Palms Way

Elk Grove, CA 95758

The City may direct payment to such other address as it deems necessary without amendment to this section by written direction to the commercial hauler. Commercial refuse hauler fees will be deemed paid: (1) on the date of personal delivery during hours

that the City Hall is open for business to the public, or (2) the date of postmark of mailed delivery with the United States Postal Service, or (3) other proof satisfactory to the City that commercial refuse hauler fees were deposited in mail or with other delivery service on or before the date their payment is due.

D. Payment Security. Commercial haulers must provide the City with a letter of credit or certificate of deposit in a form satisfactory to the City, to secure payment of commercial refuse hauler fees to the City in an amount equal to the greater of: (1) one-half of the amount of commercial refuse hauler fees received by the commercial hauler in the prior calendar year, or (2) the amount of those commercial refuse hauler fees received during the preceding 180 days.

E. Documentation and Warranty. Together with payment of commercial refuse hauler fees, the person submitting the payment and the chief financial officer of the commercial hauler or other person acceptable to the City Manager must submit the following: (1) documentation, and (2) representation and warranty:

1. Reports and documentation in form and detail satisfactory to the City Manager showing the basis for calculating the commercial refuse hauler fees, together with additional information that the City Manager may determine to be necessary to calculate or verify the commercial refuse hauler fees; and

2. A representation and warranty as follows:

I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of [INSERT NAME OF COMMERCIAL HAULER] and am responsible for keeping and maintaining its financial records, including Gross Receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING COMMERCIAL REFUSE HAULER FEE PAYMENT ACCOUNTING STATEMENT]. To my best knowledge and belief after inquiry, the statement is true, correct and complete.

The City may rely upon documentation and representations and warranties filed by commercial haulers, but that documentation and those representations and warranties will not be deemed conclusive as to the information presented or statements made therein. Commercial haulers' submission of documentation and representations and warranties does not preclude the City from taking additional measures and actions to determine and collect commercial refuse hauler fees actually due and payable.

F. Late Payment Charges. If a commercial hauler does not fully and timely pay its commercial refuse hauler fees in accordance with subsection (C) of this section, the commercial hauler must pay a late payment charge in an amount equal to two percent of the dollar (not an incremental two percent) amount of unpaid commercial refuse

hauler fees plus interest equal to one and one-half percent for each month in which the commercial refuse hauler fees are late, or the maximum amount permitted by law. Late payment charges apply, without limitation, to instances where the failure to fully and timely pay was discovered following an audit of the commercial refuse hauler's records or reports in accordance with EGMC 6.06.610(B).

G. Credits for Overpayments. If a commercial hauler believes that it has paid commercial refuse hauler fees in excess of amounts owed the City, it may request a refund by application in form and manner satisfactory to the City. Upon submission of request and documentation both satisfactory to the City, the City may refund the excess amount or credit it against future payments of commercial hauler refuse fees. Commercial haulers may not credit or offset any claimed excess payments of commercial refuse hauler fees to future payments of commercial refuse hauler fees or other amounts due to the City without first obtaining the written consent of the City Manager.

#### **6.06.610 Records, reports and City audit and inspection.**

A. Records and Accounts. Commercial haulers will maintain accurate and complete books and accounts of all gross receipts and records documenting and supporting those books and accounts. Commercial haulers must further:

1. Maintain records of the haulers' operations and business conducted, and the types of service provided in the City, including, without limitation, the types and amount (by weight and/or volume) of solid waste that the hauler collects in the City and the materials recovery, transfer, processing, disposal and other facilities where hauler delivers that solid waste); and
2. Report to the City thereon, at the time, in the manner, and in form and substance satisfactory to the City's Integrated Waste Programs Manager.

B. Audit. The City may audit the books, accounts and records of commercial haulers and commercial haulers must provide the City with copies thereof within two weeks of the City's request therefor or access thereto at locations within the county of Sacramento. Records include, without limitation, financial and operating records with respect to gross receipts as well as customer subscriptions and accounts establishing location within the City and records described in subsection (A)(1) of this section. If the City's audit demonstrates to the satisfaction of the City that the amount of commercial refuse hauler fees remitted by the commercial hauler to the City was in error, then within 30 days following the City's submission of the results of the audit to the commercial hauler, the commercial hauler will pay the City the following amount:

1. The understated commercial refuse hauler fees; plus

2. The late payment charges provided in EGMC 6.06.600(F); plus
3. The City's costs of conducting the audit, including fees paid to independent commercial haulers and time spent by City employees.

C. Inspection of Equipment and Facilities. The City may inspect any equipment (including, without limitation, vehicles and containers) and facilities (including, without limitation, operations and maintenance and solid waste handling) used by the commercial hauler in connection with operating, conducting business or providing services within the City or handling solid waste collected within the City.

#### **6.06.620 License fees or business taxes.**

Commercial refuse hauler fees are in addition to any license fee, business tax or other charge prescribed by the City.

#### **6.06.630 Use of commercial refuse hauler fees.**

The City may use the proceeds of the commercial refuse hauler fees for any costs and expenses of the City permitted under law with respect to developing and implementing its solid waste management plan as required by the California Integrated Waste Management Act and providing solid waste handling services (as defined in that act).

#### **6.06.640 Violations or infractions.**

A commercial hauler's failure to comply with this article constitutes a misdemeanor and additionally gives rise to a civil action for damages and penalties and equitable relief as provided in this section.

A. Criminal Penalties. If the commercial hauler or any person (whether as principal, agent, or employee) who acts with apparent authority of the commercial hauler fails to comply with any provision of this article, the City may fine the commercial hauler or that person no more than \$5,000 or imprison that person for not more than six months, or both, for each failure. Each day of failure to comply with any provision of this article, including late payment or underpayment of the commercial refuse hauler fee or failure to timely provide true, correct and complete reports, is considered a separate offense.

B. Civil Penalties and Equitable Relief. Nothing in this article limits any civil remedies provided at law or in equity, including without limitation: (1) specific performance, (2) injunctive relief, and (3) exemplary damages, in the manner or amount, as the case may be, sufficient to deter future offending conduct and to make an example of the commercial refuse hauler failing to comply with this article.

### **6.06.650 Commercial hauler registration.**

A. Prior to operating, conducting business or providing solid waste services within the City, commercial haulers must register with the City at the time (such as annually), in the manner and in the form and substance satisfactory to the City, including, without limitation, providing the City with the following:

1. Information such as the commercial hauler's name, contacts, operations (such as employees, vehicles, types of waste collected and facilities utilized), estimated gross receipts, ownership, affiliates, and subcontractor;
2. Documentation satisfactory to the City that the commercial hauler meets requirements established from time to time by the City to protect public health and safety, such as the indemnification and insurance requirements provided in this section;
3. Consent for the City to obtain credit reports;
4. AB 939 diversion plans, including, without limitation, a description of how the commercial hauler plans to divert from disposal:
  - a. The commercial/industrial solid waste (defined as "solid waste" in Section 40191 of the Public Resources Code, excluding construction and demolition waste and any waste collected under a residential collection franchise with the City); and
  - b. Construction and demolition waste (defined as "solid waste" and comprised of materials such as concrete, brick, wood and other rubble and debris resulting from renovation, construction and demolition of buildings and other improvements, as determined by the City); that it collects within the City in amounts established, calculated and corroborated by resolution of the City, such as program collection methods; estimates and/or projections of weight and/or volume of solid waste and processing residue therefrom delivered to identified disposal, transfer, processing and material recovery facilities; and estimates and/or projections of weight of specified recovered material types (such as cardboard, green waste, inerts, dirt, metal, paper, etc.); and
5. Expression of understandings and acknowledgements, representations and warranties with respect to content of the registration form and operations, conduct of business or services within the City.

B. The City will review the registration form to ascertain whether the commercial hauler has fully and correctly completed it and met all registration preconditions. If the City determines that the registration form is complete and the preconditions met, the City will issue the commercial hauler a decal or other label that the commercial hauler must place in the windshield of all vehicles that the commercial hauler uses within the City. If



the City determines that the registration is not complete or that the preconditions are not met, it will give the applicant commercial hauler a written description identifying the deficiencies. The commercial hauler may correct those deficiencies and resubmit its registration form within the time specified by the City.

C. The commercial hauler may not operate, conduct business or provide solid waste services within the City unless it has timely submitted its true, correct and complete registration form and meets all registration preconditions and requirements. If the commercial hauler has not timely submitted that form or met all preconditions and requirements, in addition to its other remedies in EGMC Section 6.06.640, the City may enjoin the commercial hauler from operating, conducting or providing solid waste services within the City.

D. The commercial hauler may not directly or indirectly operate, conduct business or provide services within the City through formal or informal arrangements with affiliates, subcontractors or other persons unless it identifies those persons in its registration form. Those affiliates, subcontractors or other persons must comply with the provisions of this section as if it were the commercial hauler.

## **Chapter 6.10**

### **RESIDENTIAL REFUSE HAULER FEES**

Sections:

6.10.010 Statements of law and facts – Findings.

6.10.020 Establishment of residential refuse hauler fees.

6.10.030 Records and City audit.

6.10.040 License fees or business taxes.

6.10.050 Use of residential refuse hauler fees.

6.10.060 Violations or infractions.

#### **6.10.010 Statements of law and facts – Findings.**

A. Solid Waste Handling Services Authorization. The City is authorized under Section 40059 of the California Public Resources Code to provide for solid waste handling services by private haulers who are solid waste enterprises (which are comprised of any

individual, partnership, joint venture, unincorporated private organization or private corporation which is regularly engaged in the business of providing solid waste handling services). Solid waste handling services are comprised of collection, transportation, storage, transfer or processing of solid wastes, and further include, without limitation, recycling, composting and disposal of solid waste.

B. Exclusive Residential Solid Waste Franchise. The City has provided for integrated solid waste handling services by private haulers. Prior to incorporation of the City, effective July 1, 2000, the City's residents received solid waste handling services from the county of Sacramento (the "county") through the county's subcontractor, USA Waste of California, Inc., dba Central Valley Waste Services. The City has authorized the competitive procurement of a residential contract or franchise to commence July 1, 2004, entitled "residential refuse collection and transportation to disposal facilities, and recyclables and green waste collection, transportation, processing and marketing services" (together with similar future contracts or franchise, the "franchise"). The City awarded the franchise to a single waste services provider (the "franchisee").

C. The franchise is a special privilege granted by the City to the franchisee for its use and exercise, including private profit, in consideration of which the City may charge the franchisee fees ("residential hauler franchise fees"). Pursuant to the franchise, the City also delegates solid waste management functions in furtherance of the public welfare and subject to the contractual obligations and duties in the franchise agreement.

D. SRRE and HHWE Plan Development and Implementation Costs.

1. The City must incur the considerable costs of developing and implementing its solid waste management plans as required by law. The California Integrated Waste Management Act ("AB 939") requires that the City develop and implement source reduction, household hazardous waste, and nondisposal facility elements of a solid waste management plan, referred to in this chapter as the "AB 939 plan." The City has submitted a compliance schedule to the California Integrated Waste Management Board ("CIWMB") and is preparing its AB 939 plan, including the following elements:

- a. On May 13, 2003, the CIWMB extended the due date to January 31, 2004, for submittal of complete planning documents;
- b. On September 3, 2003, the City Council approved the nondisposal facility element and shortly thereafter submitted it the CIWMB;
- c. On November 5, 2003, the City Council conducted a public hearing to receive any public comments on the preliminary draft SRRE and HHWE. No public comments were received at the public hearing but comments were received during the public

review period from the city of Sacramento, county of Sacramento, cities/county solid waste advisory committee, and the CIWMB.

- d. On December 17, 2003, the City Council conducted a public hearing to receive any public comments on the final draft SRRE and HHWE. No public comment was received. The Council also certified the negative declaration for the environmental review of both plans and approved both by resolution.
- e. The City expects to submit its complete, locally approved SRRE and HHWE by early January to the CIWMB.

2. Source Reduction and Recycling Element ("SRRE"). The SRRE must contain descriptions of the City's:

- a. Waste characterization (quantity generated and disposed, type, source of generation);
- b. Source reduction program (such as waste audits of businesses, backyard composting education and bin distribution); awards programs; variable can rates; recycled procurement policy; consumer education (buy recycled, reduce/reuse/recycle);
- c. Recycling program (such as residential curbside collection, Christmas tree recycling, residential service programs/hauler diversion requirements, multifamily service programs, drop-off centers, mixed waste processing, recycling market development zones, 20/20 CA redemption centers, promoting inerts recovery, bulky waste collection/litter cleanup days);
- d. Composting program (such as residential curbside yard waste collection, securing processing services/markets);
- e. Special waste handling program (asbestos, sewage sludge/biosolids, industrial sludge, ash, auto shredder waste, auto bodies, e-waste disposal at permitted facilities, dedicated land disposal for pretreated sludges, private salvage operations for auto shredder waste and bodies, generator ash and asbestos disposal);
- f. Fifteen (15) year disposal capacity (adjunct to haulers' collection services or by City contract); and
- g. Education and public information program (such as brochures/bill stuffers, garbage truck signs, fact sheets; advertisements on kiosks, billboards, newspaper ads, cable; classroom presentations and outreach/assemblies, poster contests; web site, phone information hotline; exhibits at public events/Earth Day, county fair, chamber of commerce shows etc.; backyard composting workshops).

Many of these programs may be in the SRRE that the City is developing and the CIWMB must approve. The SRRE must demonstrate how the City will divert fifty (50%) percent of its waste from disposal. The SRRE also must identify funding sources, such as: residential refuse collection charges, residential hauler franchise fees, residential curbside recycling revenues, licenses/permits and state aid. The residential refuse hauler fees authorized by this chapter are one such source.

3. Household Hazardous Waste Element (“HHWE”). The HHWE must describe the City’s household hazardous waste services. Presently, the City has entered into an agreement with the City of Sacramento providing for household hazardous waste drop-off, recycling and disposal services for City residents.

4. Nondisposal Facility Element (“NDFE”). The NDFE must identify waste management facilities to handle the City’s waste streams.

E. SRRE and HHWE Reporting Costs. The City must incur considerable costs in reporting its solid waste generation and diversion as required by law. The California Integrated Waste Management Act further requires that the City submit to the CIWMB an annual AB 939 report (annual diversion rate, progress in implementing SRRE) and an annual HHWE report to CIWMB (form 303, household hazardous waste collection).

F. Solid Waste Handling Service Program Costs. The City incurs considerable costs of providing solid waste handling services. The City incurs costs of providing residential refuse, recyclables and yard waste collection, processing, transportation and disposal services, including, without limitation:

1. Administration and enforcement of solid waste collection and disposal contracts, ordinances and the city code;
2. Implementation of solid waste programs required by law (including the City’s SRRE, HHWE and NDFE);
3. Mitigation of infrastructure impacts related to collection of solid waste and solid waste program implementation;
4. Protecting and promoting the public health and welfare with respect to solid waste, including, without limitation, putrescible wastes that may attract vectors, vermin and otherwise comprise a nuisance; and
5. Ancillary and related costs incurred by the City in accordance with law.

G. Potential Penalties. The City faces civil penalties of up to Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars per day for failure to implement its solid waste

management plans, including achieving fifty (50%) percent diversion as provided in Section 41850 of the Public Resources Code.

H. Residential Hauler Franchise Fees. The City in this chapter authorizes the City Council to establish residential hauler franchise fees from time to time by resolution, in accordance with the terms of the franchise. The City Council finds and declares that residential hauler franchise fees may be established in consideration for awarding franchise to the franchisee and to fund the costs, including, without limitation:

1. Administering and enforcing the franchise;
2. Implementing solid waste programs required by law (including the City's source reduction and recycling element and its household hazardous waste element);
3. Mitigating infrastructure impacts related to performance of the franchise and solid waste program implementation;
4. Protecting and promoting the public health and welfare with respect to solid waste, including, without limitation, putrescible wastes that may attract vectors, vermin and otherwise create a nuisance; and
5. Any other costs incurred by the City in accordance with law.

I. Residential Refuse Hauler Fees. The City is authorized to establish fees for providing solid waste handling services and to fund the costs of its AB 939 plan, including residential hauler franchise fees.

The City is authorized under Section 40059 of the Public Resources Code to determine charges and fees for providing solid waste handling services ("solid waste services fees").

The City is further authorized under Section 41901 of the Public Resources Code to impose fees, in amounts sufficient to pay the costs of preparing, adopting and implementing its SRRE, HHWE and NDFE, based on the types or amounts of solid waste and used to pay the actual costs incurred by the City that are directly related to preparing, adopting and implementing those elements as well as inseting and collecting the local fees ("AB 939 fees").

Residential hauler franchise fees, solid waste services fees and AB 939 fees are referred to together in this chapter as "residential refuse hauler fees."

J. Anticipated Fee Amounts. The anticipated amount of residential refuse hauler fees does not exceed the estimated costs. The anticipated amount of the solid waste services fee does not exceed the estimated costs of providing for solid waste handling services (including City administration and enforcement of its solid waste code). The

anticipated amount of the AB 939 fees does not exceed the estimated costs of developing and implementing the City's SRRE, HHWE and NDFE, as required by Section 66016(a) of the Government Code.

K. Necessity for Fees. Residential refuse hauler fees together with fees imposed on commercial haulers are necessary to provide funding to comply with AB 939 in furtherance of public health. Solid waste management is a matter of the City's public health and welfare, and the solid waste fees are necessary to provide funding to protect that interest and comply with AB 939.

#### **6.10.020 Establishment of residential refuse hauler fees.**

A. Residential Hauler. The following persons are referred to in this chapter as residential haulers: any person that provides residential solid waste handling services pursuant to the franchise.

B. Obligation.

1. Amount. Residential haulers must pay to the City the residential refuse hauler fees on gross receipts or other basis of calculation in the amount prescribed from time to time by resolution of the City Council and in accordance with the terms of this chapter.

2. Definition. "Gross receipts" includes all, total, aggregate, whole or entire revenue and income received by the residential hauler as compensation under the franchise without offsets or deductions such as costs, expenses, charges, losses, fees (including for the residential refuse hauler fees), fines or penalties, excluding revenue, and income for sale of recyclables or green waste.

Disputes over the amount of gross receipts and calculation of residential refuse hauler fees will be resolved by the Public Works Director or his or her respective designees. The Director's decision may be appealed to the City Manager by explaining the basis of the appeal, within ten (10) days of the Director's decision, and the prepayment of the City's projected costs and expenses of conducting the appeal, including related staff time and fees of consultants to the City. The burden of proof will be on the residential hauler challenging the Director's decision. The City Manager or his or her designee will hear the appeal and render a written decision, which will be final. The City will return any excess prepayments to the residential hauler within thirty (30) days of rendering the written decision, or the residential hauler will reimburse the City additional costs and expenses within thirty (30) days of the City's documented request therefor.

C. Time and Manner of Payment. Residential haulers must pay the residential refuse hauler fees monthly, due and payable on or before the first day of the second month immediately following the month in which they received gross receipts from their

customers, commencing on the day the ordinance codified in this chapter and its accompanying resolution take effect. For example, for gross receipts received in July, residential haulers must remit the corresponding monthly residential refuse hauler fee on or before September 1st.

Residential haulers must pay the residential refuse hauler fees to:

City of Elk Grove Finance Department

8401 Laguna Palms Way

Elk Grove, CA 98758

The City may direct payment to such other address as it deems necessary without amendment to this chapter by written direction to the residential hauler. Residential refuse hauler fees will be deemed paid:

1. On the date of personal delivery during hours that the City Hall is open for business to the public;
2. The date of postmark of mailed delivery with the United States Postal Service; or
3. Other proof satisfactory to the City that residential refuse hauler fees were deposited in mail or with other delivery service on or before the date their payment is due.

D. Payment Security. Within thirty (30) days of City direction, residential haulers must provide the City with a letter of credit or certificate of deposit in form satisfactory to the City, to secure payment of residential refuse hauler fees to the City in an amount equal to the greater of:

1. One-half (0.5) of the amount of residential refuse hauler fees received by residential hauler in the prior calendar year; or
2. The amount of those residential refuse hauler fees received during the preceding one hundred eighty (180) days.

E. Documentation and Warranty. Together with payment of residential refuse hauler fees, the person submitting the payment and the chief financial officer of the residential hauler or other person acceptable to the City Manager must submit the following documentation and representation and warranty:

1. Reports and documentation in form and detail satisfactory to the City Manager showing the basis for calculating the residential refuse hauler fees, together with additional information that the City Manager may determine to be necessary to calculate or verify the residential refuse hauler fees; and

2. A representation and warranty as follows:

I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of [INSERT NAME OF RESIDENTIAL HAULER] and am responsible for keeping and maintaining its financial records, including Gross Receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING RESIDENTIAL REFUSE HAULER FEE PAYMENT ACCOUNTING STATEMENT]. To my best knowledge and belief after inquiry, the statement is true, correct and complete.

Documentation and representations and warranties filed by residential haulers shall be relied upon by the City, but will not be deemed conclusive as to the information presented or statements made therein. Residential hauler's submission of documentation and representations and warranties does not preclude the City from taking additional measures and actions to determine and collect residential refuse hauler fees actually due and payable.

F. Late Payment Charges. If a residential hauler does not fully and timely pay its residential refuse hauler fees in accordance with EGMC Section 6.10.020(C), the residential hauler must pay a late payment charge in an amount equal to two (2%) percent of the amount of unpaid residential refuse hauler fees plus interest equal to one and one-half (1.5%) percent for each month in which the residential refuse hauler fees are late, or the maximum amount permitted by law.

G. Credits for Overpayments. If a residential hauler believes that it has paid residential hauler refuse fees in excess of amounts owed the City, it may request a refund by application in form and manner satisfactory to the City. Upon submission of request and documentation both satisfactory to the City, the City may refund the excess amount or credit it against future payments of residential hauler refuse fees. Residential haulers may not credit or offset any claimed excess payments of residential hauler refuse fees to future payments of residential hauler refuse fees or other amounts due to the City without first obtaining the written consent of the City Manager.

**6.10.030 Records and City audit.**

A. Records and Accounts. Residential haulers will maintain accurate and complete books and accounts of all gross receipts and records documenting and supporting those books and accounts.

B. Audit. The City may audit the books, accounts and records of residential haulers and residential haulers must provide the City with copies thereof within two (2) weeks of the City's request therefor or access thereto at locations within the County of Sacramento. Records include, without limitation, financial and operating records with respect to gross



receipts as well as customer subscriptions and accounts establishing location within the City. If the City's audit demonstrates to the satisfaction of the City that the amount of residential refuse hauler fees remitted by contractor to the City was in error, then within thirty (30) days following the City's submission of the results of the audit to the residential hauler, the residential hauler will pay the City the following amount:

1. The understated residential refuse hauler fees; plus
2. The late payment charges provided in EGMC Section 6.10.020(F); plus
3. The City's costs of conducting the audit, including fees paid to independent contractors and time spent by City employees.

**6.10.040 License fees or business taxes.**

Residential refuse hauler fees are in addition to any license fee, business tax or other charge prescribed by the City.

**6.10.050 Use of residential refuse hauler fees.**

The City may use the proceeds of the residential refuse hauler fees for any costs and expenses of the City permitted under law with respect to developing and implementing its AB 939 plan and providing solid waste handling services (as defined in AB 939).

**6.10.060 Violations or infractions.**

Failure to comply with this chapter constitutes a misdemeanor and additionally gives rise to a civil action for damages and penalties.

A. Criminal Penalties. A residential hauler or any person, whether as principal, agent, or employee, acting with apparent authority of a franchise, who fails to comply with this chapter will be fined no more than One Thousand and no/100<sup>ths</sup> (\$1,000.00) or imprisoned for not more than six (6) months in jail, or both. Each day of failure to comply, including late payment or underpayment of the residential refuse hauler fee, is considered a separate offense.

B. Civil Penalties. Nothing in this chapter shall limit any civil remedies provided at law or in equity, including, without limitation, exemplary damages in an amount sufficient to deter future offending conduct and to make an example of the party failing to comply with this chapter.

## **Chapter 6.14**

### **GARBAGE IN WATERCOURSES**

Sections:

6.14.010 Dumping prohibited.

#### **6.14.010 Dumping prohibited.**

It is unlawful for any person, firm or corporation to place, deposit or dump, or cause to be placed, deposited or dumped, any garbage, swill, cans, bottles, papers, ashes, refuse, carcass of any dead animals, offal, trash, rubbish, junk, or any similar object or substance in any creek, stream, or natural watercourse, in or upon the bed or channel of such creek, stream or natural watercourse, located and being within the City.

## **Chapter 6.18**

### **ABANDONED VEHICLES**

Sections:

6.18.010 Purposes.

6.18.020 Definitions.

6.18.150 Application of chapter.

6.18.160 Application of chapter – Exceptions.

6.18.170 City's remedies nonexclusive.

6.18.180 Enforcement responsibility.

6.18.190 Public nuisance – Director's determination.

6.18.200 Notice of intention to abate and remove vehicle.

6.18.210 Notice of intention to abate and remove vehicle – Required contents.

6.18.220 Notice of intention to abate and remove vehicle – Exceptions.

6.18.230 Appeals.

6.18.280 Vehicle disposition.

- 6.18.290 Vehicle disposition – By Director.
- 6.18.300 Vehicle disposition – Notice to DMV.
- 6.18.310 Vehicle disposition – Low-valued vehicle.
- 6.18.320 Assessment of cost against real property.
- 6.18.330 Assessment of cost against real property – Recordation of abatement lien.
- 6.18.340 Assessment of cost against real property – Release of abatement lien.
- 6.18.350 Recovery of costs – Abandoned vehicles.
- 6.18.360 Enforcement of parking regulations.
- 6.18.370 Treble cost.

#### **6.18.010 Purposes.**

This chapter is enacted under the authority of Sections 22660 and 22710 of the Vehicle Code, for the purpose of establishing procedures for the abatement and removal, as public nuisances, of abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof, from private or public property in the City, including highways, and for the recovery of the cost of such removal and administration of this chapter.

The existence, accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles, or parts thereof, creates conditions likely to reduce the value of real property in the vicinity, promote blight and deterioration, and invite plundering, create fire hazards and harborage for rodents and insects, and is injurious to the public peace, health, safety, and general welfare. The presence of abandoned, wrecked, dismantled, or inoperative vehicles, or parts thereof, within the City constitutes a public nuisance, which the City of Elk Grove is empowered to abate and remove in accordance with the provisions of this chapter.

#### **6.18.020 Definitions.**

The meanings ascribed to the terms set forth in this section shall govern the interpretation of this chapter:

“Abandoned” shall mean the status of a vehicle or part thereof when the vehicle owner has ceased to assert or exercise any interest, right or title therein without intent to resume or reassert such interest, right or title.

“Director” shall mean the City Manager and any subordinate City officer or employee to whom he or she delegates any duty imposed upon or authority vested in the Director under this chapter.

“Dismantled” shall mean the condition of a vehicle which has been taken apart, or to pieces, and/or stripped, or otherwise deprived of any of its integral parts or equipment.

“Hearing Officer” shall mean a person to whom the City Manager has assigned hearing responsibilities in accordance with this chapter.

“Highway” shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. “Highway” includes street.

“Inoperative” shall mean the condition of a vehicle which is physically incapable of working, functioning, or otherwise operating to produce its designed effect.

“Motor vehicle” shall mean a vehicle which is self-propelled.

“Property owner” shall mean the owner of the land where a vehicle or part thereof subject to regulation pursuant to this chapter is situated, as shown on the last equalized assessment roll of the City.

“Street” shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. “Street” includes highway.

“Vehicle” shall mean a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. “Vehicle” includes any motor vehicle.

“Vehicle owner” shall mean both the last registered owner, within the meaning of Section 505 of the Vehicle Code, and the last legal owner, within the meaning Section 370 of the Vehicle Code, a vehicle or part thereof subject to regulation pursuant to this chapter, as shown in the records of the Department of Motor Vehicles.

“Wrecked” shall mean the condition of a vehicle which consists of disordered or broken remains, or which has been brought to a physically impaired or unsound condition or other ruinous state by reason of collision, crash or other forceful impact.

#### **6.18.150 Application of chapter.**

Except as otherwise expressly provided by EGMC Sections 6.18.160 and 6.18.360 and the procedures adopted pursuant to the latter section, this chapter shall apply to abandoned, wrecked, dismantled, or inoperative vehicles, or any part thereof, situated upon any private or public property, including highways, within the City of Elk Grove.

#### **6.18.160 Application of chapter – Exceptions.**

This chapter shall not apply to any vehicle or part thereof which is either:

- A. Completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- B. Stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, or a junkyard; or
- C. Stored upon private property in the manner authorized by the Zoning Code.

The exceptions provided by this section shall not be construed to authorize the maintenance of a public or private nuisance, as such nuisance may be defined under any provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code.

#### **6.18.170 City's remedies nonexclusive.**

This chapter shall not be construed as excluding any other lawful remedies available to the City of Elk Grove for regulation, abatement, and/or removal of abandoned, wrecked, dismantled, or inoperative vehicles situated within the City. The procedures provided by this chapter shall be in addition to any other applicable regulations, statutes, or ordinances heretofore or hereinafter enacted by the state of California, this City, or any other entity having jurisdiction in the matter.

#### **6.18.180 Enforcement responsibility.**

The Director is charged with the responsibility of administering this chapter and exercising the authority conferred thereby. The Director may enter upon private property for purposes of administering and enforcing this chapter, to examine a vehicle or part thereof, to obtain information as to the identity of the vehicle, and to remove or cause to be removed a vehicle or part thereof declared to be a nuisance pursuant to this chapter. Any other person, firm or corporation authorized by the City to remove vehicles from property for purposes of enforcement of this chapter may enter upon private property to perform such removal, upon request by the Director. In the event that entry to private property is denied, the Director shall obtain any warrant necessary, except in the case of emergency in which case no warrant is required.

#### **6.18.190 Public nuisance – Director's determination.**

If the Director finds that reasonable grounds exist to believe that a vehicle or part thereof is abandoned, wrecked, dismantled or inoperative at any location to which this chapter applies pursuant to EGMC Section 6.18.150, the Director shall declare such

vehicle or part to be a public nuisance and thereupon proceed to abate such nuisance in the manner prescribed by this chapter.

**6.18.200 Notice of intention to abate and remove vehicle.**

Except as otherwise provided by EGMC Section 6.18.220, the Director shall issue, not less than ten (10) days in advance, written notice of intention to abate and remove any vehicle or part thereof which the Director has determined to be a public nuisance pursuant to EGMC Section 6.18.190. The Director shall mail such notice by first class certified mail, return receipt requested, to the property owner and to the vehicle owner, unless the vehicle is in such condition that identification numbers are not available to determine vehicle ownership. The Director shall post a copy of the notice upon or at the site of such vehicle or part.

**6.18.210 Notice of intention to abate and remove vehicle – Required contents.**

The notice required by EGMC Section 6.18.200 shall contain a statement of the hearing rights of the property owner and of the vehicle owner, in accordance with EGMC Section 6.18.230. Such statement shall include notice to the property owner that he or she may either appear in person at a hearing or submit a sworn written statement denying responsibility for the presence of the vehicle or part thereof on his or her land, with the reasons for such denial, in lieu of appearing.

The notice shall specify the address of the real property where such vehicle or part is situated, a description identifying such vehicle or part, and the condition thereof found by the Director to constitute a public nuisance, the section(s) of this chapter found by the Director to have been violated, and state that either voluntary abatement thereof or request for a hearing must be made by the property owner or vehicle owner, in the manner prescribed by EGMC Section 6.18.230, within ten (10) days from the date of such notice, and that the failure to so request such a hearing shall constitute waiver of the right thereof. Such notice shall specify that if the abatement is made by the City costs may be assessed against the property owner in accordance with Section 25845 of the Government Code, or, in the case of an abandoned vehicle, against the last registered owner of record, in accordance with Section 22524 of the Vehicle Code.

**6.18.220 Notice of intention to abate and remove vehicle – Exceptions.**

The Director shall not be required to issue notice pursuant to EGMC Section 6.18.200 if:

- A. The property owner and vehicle owner have each signed releases authorizing removal and waiving further interest in the vehicle or part thereof; or
- B. The vehicle or part is:

1. Inoperable due to the absence of a motor, transmission or wheels; and
2. Is incapable of being towed; and
3. Is valued at less than Two Hundred and no/100<sup>ths</sup> (\$200.00) Dollars by a person specified in Section 22855 of the Vehicle Code; and
4. Is determined by the Director to be a public nuisance presenting an immediate threat to public health or safety; and
5. Is located on a parcel that is either zoned for agricultural use or not improved with a residential structure containing one or more dwelling units; and
6. The property owner has signed a release authorizing removal and waiving further interest in the vehicle or part.

#### **6.18.230 Appeals.**

Either within ten (10) days after the date of the notice of intention prescribed by EGMC Section 6.18.200 is mailed, or at the time of signing a release pursuant to EGMC Section 6.18.220(A) or (B)(6), the property owner and/or the vehicle owner may appeal the determination that a vehicle or part be abated. Such appeals shall be heard and determined as set forth in EGMC Chapter 1.11.

If the property owner submits a sworn written statement pursuant to EGMC Section 6.18.210 denying responsibility for the presence of the vehicle or part on his or her land within the ten (10) day period prescribed by this section, such statement shall be construed a request for hearing which does not require the presence of the property owner. If no request for hearing is received by the Director within the time prescribed by this section, the Director shall cause the vehicle or part to be removed and disposed of in the manner authorized by this chapter.

#### **6.18.280 Vehicle disposition.**

After a vehicle has been removed pursuant to this chapter, such vehicle shall not be reconstructed or made operable unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Section 5004 of the Vehicle Code.

#### **6.18.290 Vehicle disposition – By Director.**

The Director may dispose of a vehicle or part thereof under this chapter by removal thereof to a licensed scrapyards, automobile dismantler's yard, or other site authorized by Section 22662 of the Vehicle Code.

### **6.18.300 Vehicle disposition – Notice to DMV.**

Within five (5) days following the date of removal of a vehicle or part thereof under this chapter, the Director shall give notice of such removal to the Department of Motor Vehicles, identifying the vehicle or part, together with any evidence of registration obtained by the Director, including, without limitation, the registration card, certificate of ownership, or license plate.

### **6.18.310 Vehicle disposition – Low-valued vehicle.**

Prior to final disposition of a vehicle described by EGMC Section 6.18.220(B) for which evidence of registration was recovered, the Director shall provide the vehicle owner with written notice of intent to dispose of the vehicle or part from a site authorized by Section 22662 of the Vehicle Code. Such notice shall state that if the vehicle or part is not claimed and removed within twelve (12) days following the date such notice is mailed, final disposition shall proceed.

### **6.18.320 Assessment of cost against real property.**

If the property owner fails to pay, upon demand, the cost of abatement incurred by the City in the enforcement and administration of this chapter, such costs may be especially assessed against the real property involved, pursuant to Sections 38773-38773.5 of the Government Code. Such assessment shall be collected at the same time and in the same manner as are City *ad valorem* property taxes.

Cost of enforcement and administration of this chapter shall include, but not be limited to, charges for each vehicle cited under this chapter, a towing fee for each vehicle towed pursuant to this chapter and a fee to cover the cost of staff time involved in any action, administrative proceeding, or special proceeding required by this chapter, inspection of vehicles and other property, publication, mailing and posting of notices, conducting hearings, processing appeals and pursuing any judicial action. Such charges shall be established from time to time by resolution of the City Council and shall not exceed the actual cost of the City of enforcement and administration of this chapter.

### **6.18.330 Assessment of cost against real property – Recordation of abatement lien.**

In the case of any special assessment made pursuant to EGMC Section 6.18.320, the Director shall cause a notice of abatement lien to be recorded in the Office of the Sacramento County Clerk-Recorder. Such notice shall identify the property owner, or possessor of the property, his or her last known address of record, the date upon which abatement was ordered, the date that the abatement was completed, a description of the real property subject to the lien, and the amount of the abatement costs.



#### **6.18.340 Assessment of cost against real property – Release of abatement lien.**

The Director may release or subordinate an abatement lien imposed under this chapter in the same manner as provided by law for release or subordination of a judgment lien on real property.

#### **6.18.350 Recovery of costs – Abandoned vehicles.**

Pursuant to Section 22524 of the Vehicle Code, the Director shall be authorized to seek recovery of costs incurred by the City for the removal and disposition of an abandoned vehicle from the last registered owner thereof.

#### **6.18.360 Enforcement of parking regulations.**

Civilian employees of the Planning Department are hereby authorized, in addition to any other persons so authorized, to enforce the provisions of EGMC Chapter 10.24 regarding parking regulations. The administrative procedures established by this chapter shall not apply to enforcement of such regulations. Instead, for the purposes of EGMC Section 10.24.150, the Planning Department shall establish procedures which conform to the requirements of Chapters 9 and 10 of Division 11 of the Vehicle Code of the state of California.

#### **6.18.370 Treble cost.**

Pursuant to Section 38773.7 of the Government Code, upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner is responsible for a condition that may be abated pursuant to Section 38773 through 38773.5 of the Government Code, a court may order the owner to pay treble the cost of the abatement.

### **Chapter 6.22**

#### **CLEAN INDOOR AIR AND HEALTH PROTECTION**

Sections:

6.22.000 Purposes.

6.22.005 Authority.

- 6.22.010 Definitions.
- 6.22.015 Bar.
- 6.22.020 Commercial enterprise – Nonprofit entity – Person.
- 6.22.022 Director.
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- 6.22.025 Enclosed area.
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- 6.22.030 Members of the general public.
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- 6.22.040 Restaurant.
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- 6.22.050 Tobacco store.
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- 6.22.155 Posting requirements.
- 6.22.160 Retaliation prohibited.
- 6.22.165 Violation – Smoking or posting.
- 6.22.170 Retaliation remedies.
- 6.22.175 Enforcement.

**6.22.000 Purposes.**

The City Council hereby finds as follows:

The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the health consequences of involuntary smoking concludes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards of involuntary smoking include respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm. While all members of the population are truly at increased risk due to exposure to sidestream tobacco smoke, it constitutes a special health hazard for children, the elderly and people with chronic lung disorders.

The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population."

Employees subject to prolonged exposure to sidestream smoke in the workplace have been found in scientifically conducted studies to experience a loss of job productivity

and some have been forced to take periodic sick leave because of reactions to secondhand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, costs of medical care, loss of productivity, and cleaning and maintenance requirements. A recent scientific study has reported that sidestream smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with sidestream smoke. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.

The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.

More than three-quarters (0.75) of Sacramento regional residents are nonsmokers and the number of nonsmokers is steadily increasing. Opinion surveys show that a majority of both nonsmokers and smokers favor restrictions on smoking in public places and places of employment.

Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of nonsmokers and constitutes a public nuisance in public places and workplaces.

#### **6.22.005 Authority.**

This chapter is enacted pursuant to the provisions of Section 25946 of the Health and Safety Code for the purpose of restricting and regulating smoking in public places and in places of work in order to reduce the hazards and nuisance which smoking causes to those who are involuntarily exposed.

#### **6.22.010 Definitions.**

As used in this chapter, the words and phrases identified in EGMC Sections 6.22.015 through 6.22.055 shall have the following meanings.

#### **6.22.015 Bar.**

“Bar” means an area which is devoted to the serving of alcoholic beverages for consumption on the premises and in which the serving of food, if any, is incidental to the consumption of alcoholic drinks. When a bar is operated within a building in conjunction with another use, such as a restaurant, only the area utilized primarily for the consumption of alcoholic beverages shall constitute the bar. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a bar, even though alcoholic beverages may be served therein.

**6.22.020 Commercial enterprise – Nonprofit entity – Person.**

The term “commercial enterprise” shall mean any business entity formed for profit-making purposes, including professional corporations and other entities under which legal, medical, dental, engineering, architectural, or other professional services are delivered, and also any person charged with the responsibility of controlling conduct in behalf of the enterprise upon any premises regulated by this chapter.

The term “nonprofit entity” shall mean any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct in behalf of the entity upon any premises regulated by the provisions of this chapter.

A public agency is not a “nonprofit entity” within the meaning of this section.

The term “person” means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club, or other organization of any kind, except the City or any other public agency.

**6.22.022 Director.**

The term “Director” means the Planning Director or the Director’s designee.

**6.22.023 ETS.**

The term “ETS” means environmental tobacco smoke.

**6.22.025 Enclosed area.**

The term “enclosed area” shall mean all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system, and is enclosed on all sides by solid walls or windows (exclusive of doorways or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping,” or similar structures.

**6.22.027 HVAC.**

The term “HVAC” means heating, ventilating and air conditioning.

**6.22.030 Members of the general public.**

The term “members of the general public” includes shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise or

nonprofit entity; and exclude employees thereof, sales representatives, service repair persons, and persons delivering goods, merchandise or services to a commercial enterprise, nonprofit entity or the City.

#### **6.22.035 Office.**

The term “office” means an area enclosed by walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling or storage, or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures, including:

A. Legal, medical, dental, engineering, accounting, counseling and other professional offices;

B. Insurance, real estate, ticket, collection agency, and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by members of the general public; and

C. Offices to which members of the general public are admitted in order to promote the objects or purposes of the nonprofit entities.

#### **6.22.040 Restaurant.**

The term “restaurant” means any coffee shop, cafeteria, luncheonette, soda fountain, “fast food service,” and other establishment where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises. The term does not include a cafeteria or lunch room defined as a “workplace” by EGMC Section 6.22.055(C), whether or not members of the general public incidentally frequent the facility.

#### **6.22.045 Smoking.**

The term “smoking” means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed, or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant, or other ignited combustible substance in any manner or in any form.

#### **6.22.050 Tobacco store.**

The term “tobacco store” means a place utilized primarily for the sale to members of the general public at retail of tobacco products or accessories, and in which the sale of any other products is merely incidental.

### **6.22.055 Workplace.**

The term “workplace” means any enclosed area which is occupied by two (2) or more employees of a commercial enterprise, nonprofit entity or the City, including but not limited to places:

A. Utilized for:

1. The manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or
2. The physical storage for purposes of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;

B. Utilized or operated for a purpose described by EGMC Sections 6.22.060 through 6.22.135 and from which members of the general public are excluded;

C. Utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room or classroom primarily for the use or benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed day care facility for children.

### **6.22.060 Smoking prohibitions, public places.**

Except as specifically provided, it is unlawful for any member of the general public or any other person, including an employee, to smoke in the public places named and described in EGMC Sections 6.22.060 through 6.22.135 and other public places similarly situated, including, but not limited to, the following enclosed areas:

A. Common work areas occupied by employees performing clerical, technical, administrative or other business or work functions;

B. Merchandise display areas, checkout stations, and counters and other pay stations;

C. Hallways;

D. Restrooms;

E. Escalators, elevators and stairways;

F. Lobbies;

G. Reception areas;

H. Waiting rooms;

I. Service lines;

J. Classrooms, meeting or conference rooms, or lecture halls; and

K. Other places in which members of the general public congregate for service or otherwise frequent.

**6.22.065 Stores.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to:

A. The enclosed common areas of shopping malls;

B. Automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail;

C. Grocery, specialty, department and other stores which sell goods or merchandise at retail; and

D. Service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video games, poolhalls and other amusement centers, and other similar establishments offering services or products to members of the general public.

**6.22.070 Banks.**

The prohibitions of EGMC Section 6.22.060 shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to members of the general public.

**6.22.075 Hotels/motels.**

The prohibitions of EGMC Section 6.22.060 shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty (30) days. Smoking is permissible in rental rooms and in on-premises restaurants and bars as provided in EGMC Sections 6.22.105 and 6.22.145(B). The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area. The rooms so designated will be posted as smoking prohibited and ashtrays removed. Customers seeking accommodations will be routinely advised of the availability of nonsmoking rooms.



#### **6.22.080 Terminals.**

The prohibitions of EGMC Section 6.22.060 shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis.

#### **6.22.085 Buses and taxis.**

Smoking by either passengers or operators shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the City.

#### **6.22.090 Theaters.**

The prohibitions of EGMC Section 6.22.060 shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided, that neither this section nor EGMC Section 6.22.060 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs.

#### **6.22.095 Recreational facilities.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to the following facilities to the extent that they are enclosed areas: sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar place where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sport events.

Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.

Smoking may be allowed in enclosed on-site restaurants, subject to the provisions of EGMC Section 6.22.105, and in enclosed on-site bars.

#### **6.22.100 Recreation halls.**

The prohibitions of EGMC Section 6.22.060 shall be applicable to recreation halls and other similar facilities where members of the general public play bingo or cards, dance or engage in recreational, character-building or cultural activities.

An owner, manager or operator of a recreation hall shall designate not less than fifty (50%) percent of the main activities area of such facility, not including restrooms,

lounges and kitchens, as nonsmoking. Commencing July 1, 1992, an owner, manager or operator of a recreation hall shall designate not less than 75 percent of the main activities area of such facility, not including restrooms, lounges and kitchens, as nonsmoking. Commencing December 31, 1993, the owner, manager or operator of a recreation hall shall designate the main activities area of such facility, including restrooms, lounges and kitchens, as nonsmoking. Signs shall be posted in the manner prescribed by EGMC Section 6.22.155. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a restaurant or bar.

#### **6.22.105 Restaurants.**

Within all restaurants, the prohibitions in EGMC Section 6.22.060 shall be applicable to lobbies, waiting areas, restrooms and such dining seating areas as are allocated for nonsmoking.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a restaurant or bar.

#### **6.22.110 City buildings.**

Smoking is prohibited in all City buildings.

#### **6.22.120 Places of exhibition.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to libraries, museums, aquariums, galleries, convention halls and similar facilities where members of the general public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services.

#### **6.22.125 Hospitals.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas, provided the Medical Director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with

the recovery and treatment of nonsmoking patients, and provided that adequate nonsmoking areas are made available for nonsmoking patients.

A. Neither this section nor EGMC Section 6.22.060 shall be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by or under statutes or administrative regulations applicable to such licensed facilities.

#### **6.22.130 Schools.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to any school or educational institution operated by a commercial enterprise or nonprofit entity for the purpose of providing academic classroom instruction, trade craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to public school facilities when school district management authorizes their use by members of the general public other than students.

#### **6.22.135 Day care facilities.**

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to private residences during the time when such residences are operated as licensed day care facilities for children.

#### **6.22.140 Smoking prohibitions, workplace.**

Smoking is prohibited in enclosed workplaces of commercial enterprises, nonprofit entities and all City-owned and City-managed buildings including, but not limited to, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, and waiting rooms, classrooms, meeting or conference rooms, and auditoriums.

On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to members of the general public.

Each commercial enterprise, nonprofit entity and the City shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and "No Smoking" signs shall be posted in the manner prescribed by EGMC Section 6.22.155.

### **6.22.145 Places where smoking permissible.**

Smoking may be permitted in all locations where smoking is not prohibited by this chapter, including the following locations:

A. A private residence, including an attached or detached garage, whether or not the residence is utilized for office or other business purposes.

B. Bars, whether operated as a separate business entity or as a physically separated facility within a restaurant, nightclub or other business entity.

C. Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded.

D. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which members of the general public are excluded.

E. In any enclosed place wherein this chapter specifically permits smoking, notwithstanding the fact that such location is a workplace.

F. Tobacco stores.

It shall not constitute a violation of EGMC Section 6.22.060 for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

The foregoing places are not considered workplaces subject to the provisions of EGMC Section 6.22.140. Employers will, however, attempt to find a reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking-permissible area.

Notwithstanding any provision in this chapter which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached within a particular workplace, the commercial enterprise, nonprofit entity or City who employs the nonsmoking employees shall formulate, promulgate and implement restrictions or prohibitions upon smoking in a manner which accommodates the reasonable preferences and needs of the nonsmoking employees in relation to the nuisance and health impacts of the smoking upon the nonsmokers. The area in which smoking is prohibited shall be posted by a "No Smoking" sign in the manner prescribed by the provisions of EGMC Section 6.22.155.

### **6.22.150 Exemption procedures.**

Any owner or manager of a business or other establishment subject to this chapter may apply to the Chief of the Environmental Health Division for an exemption or modification to its provisions. Exemptions may only be granted on (A) a showing by the petitioner of significant financial hardship due to compliance, or (B) the proposed implementation of an alternative approach or technology which would provide equivalent protection from the health hazards of sidestream smoke.

An application for exemption will be accompanied by a reasonable fee to cover the cost of preparation for the hearing, and the application will include any data required by the Division. The Division will review the application and submit it, with recommendations, for hearing by the Sacramento Environmental Commission. The applicant will be entitled to present evidence at the hearing, which will be scheduled within sixty (60) days of the receipt of the application.

The Commission will, after taking into consideration the testimony received at the hearing, issue its findings and recommendations within twenty (20) days of the completion of the hearing. The Division will complete procedural action on the application and notify interested parties within twenty (20) days of its receipt from the Commission.

The applicant may appeal the Commission's decision to the City Council within thirty (30) days of receipt of action notification by the Division. Upon appeal, the Council will set a hearing within sixty (60) days and make a final determination at that hearing.

### **6.22.152 Bingo facilities.**

A. The purpose of this section is to provide organizations who operate bingo games and facilities pursuant to EGMC Chapters 4.26 or 4.28 with an alternative method of providing the health protection from ETS required by this chapter without adversely impacting the patronage of, and the revenue generated for charitable purposes by, such facilities. Such revenue provides an important source of income to these charitable organizations that, in turn, is used to furnish a wide range of social and other programs that are of great benefit to the health and welfare of the community. A total prohibition on smoking within such facilities is likely to significantly discourage the number of persons willing to patronize these facilities, thereby threatening a critical source of income for these organizations. The permit authorized hereunder shall not be subject to any moratorium applicable to exemptions under EGMC Section 6.22.150.

B. Organizations that have a valid special business license issued pursuant to EGMC Chapters 4.26 or 4.28 may apply to the Director for a permit to maintain a smoking area

within facilities so licensed. Any such permit shall be subject to compliance with the conditions imposed by the Director.

C. Applications for permits issued hereunder shall be subject to any fee established by resolution of the City Council and such permits shall be valid for a maximum of one (1) year.

D. Permits issued hereunder shall include the following conditions:

1. The facility must provide adequate seating at all times to nonsmokers in a nonsmoking area. With the exception of passageways, the nonsmoking area shall be physically divided and separated from the area of the facility where smoking is permitted.

2. Ventilation for the facility shall be provided by an HVAC system which shall be designed and operated to provide protection to persons in the nonsmoking area from exposure to ETS equivalent to the protection afforded by EGMC Section 6.22.060.

3. The components of the HVAC system shall be routinely maintained by regular cleaning, replacement of filters and any other procedures necessary to comply with the manufacturer's specifications. The permittee shall also be required, on at least a semi-annual basis, to service the fans and other mechanical equipment to the extent necessary to maintain proper design performance.

4. Performance standards, together with appropriate methodologies for monitoring such standards, shall be established by the Director for each permit. The permittee shall be required to demonstrate compliance with such performance standards under normal ambient operating conditions. Such compliance shall be established by means of performance tests or monitoring, or both, as specified by the Director.

5. The permit is nontransferable.

6. If the Director determines that there has been a significant unauthorized change in the design or configuration of the HVAC system, or in the conditions under which it was designed to operate, the permit shall be revoked. "Significant change," for purposes of this subsection, is a change that could potentially cause an adverse effect on the ability of the HVAC system to continue to provide equivalent health protection from ETS to the nonsmoking area.

7. All staff, whether paid or volunteer, shall be provided with written notice that the facility permits smoking and that ETS is a health hazard. Such staff shall also be notified that requests to work without exposure to ETS will be accommodated without penalty. A copy of this written notice shall be furnished to the Director prior to the issuance of the permit.

8. A written procedure approved by the Director shall be furnished to all staff, whether paid or volunteer, and to organizations that use the facility, that requires security personnel and other staff to monitor nonsmoking areas for compliance with this chapter.

9. The licensee shall post in a conspicuous place at any entrance to the smoking area of the facility a notice regarding exposure to ETS that is in compliance with Chapter 6.6 (commencing with Section 25249.5) of Division 20 of the Health and Safety Code warning staff and patrons of the facility of exposure to a chemical known to the state of California to cause cancer. A warning notice shall be similarly posted emphasizing that ETS poses special risks to children and pregnant women.

10. Minors shall be prohibited in the smoking area at any time that ETS is present.

11. The facility shall maintain attendance records of each game that document how many patrons used the smoking and nonsmoking areas, respectively, of the facility during each bingo session and shall maintain such records for a period of at least one (1) year.

12. Such other conditions as may be deemed appropriate by the Director.

E. The permit may be revoked by the Director if the HVAC system fails to comply with applicable performance standards or if the permittee violates any of the permit conditions. The provisions of this chapter shall be applicable to any bingo facility for which the permit has been revoked until the permit has been reinstated or a new permit has been issued.

F. If the Director finds that a permittee is in violation of any of the conditions of its permit, the Director shall issue a notice to the permittee setting forth the acts or omissions with which the permittee is charged and informing the permittee of a right to a hearing, if requested, to show cause why the permit should not be revoked. A written request for a hearing from the permittee must be received by the Director within fifteen (15) days after the date of issuance of the notice. A failure to request a hearing within fifteen (15) days after the date of issuance of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the Director may order a hearing at any reasonable time within this fifteen (15) day period to expedite the permit revocation process. The hearing shall otherwise be held within fifteen (15) days of the Director's receipt of a request for a hearing. Upon the agreement of the permittee and the Hearing Officer, the hearing date may be postponed beyond such fifteen (15) day period.

#### **6.22.155 Posting requirements.**

Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in

every place where smoking is prohibited “No Smoking” signs, or the international “No Smoking” symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, whichever are appropriate, with letters not less than one (1”) inch in height.

An owner, operator, or manager of a building wherein, pursuant to these regulations, there is no smoking permitted in any space in the building may limit the “No Smoking” postings to first floor entrances and exits and to the elevator lobby areas of all other floors.

Motion picture theaters shall show upon the movie or live action screens for at least five (5) seconds prior to the showing of each feature motion picture the message that smoking is prohibited within the audience seating and other areas as specified.

Restaurants shall post at their entrances a sign stating that nonsmoking seats are available. Likewise, recreational halls shall post signs alerting users of the availability of nonsmoking rooms. Smoking-permitted areas will be posted as such.

Motels and hotels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed.

**6.22.160 Retaliation prohibited.**

It shall be unlawful for a commercial enterprise, nonprofit entity or the City to retaliate against any member of the general public or an employee or applicant for employment of the enterprise, entity or City because such member of the general public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

**6.22.165 Violation – Smoking or posting.**

Any person who violates the prohibitions contained in EGMC Sections 6.22.060 through 6.22.140 and any person who violates EGMC Section 6.22.155 by failing to post the signs or take the other actions required by this section shall be guilty of an infraction, punishable in the manner hereinafter prescribed.

Fines for the crimes made infractions by this section shall be levied in the amounts prescribed by Section 25132 of the Government Code, as that section may hereinafter be amended.



**6.22.170 Retaliation remedies.**

Violation of any of the provisions of EGMC Sections 6.22.160 or 6.22.165 shall be remedial through civil action filed in a court of competent jurisdiction for injunctive or other appropriate relief.

**6.22.175 Enforcement.**

It shall be the responsibility of the City Manager to enforce, in behalf of the City, the provisions of this chapter. The City Manager shall be authorized to prosecute, in the name of the City, pursuant to the provisions of Section 25132 of the Government Code, civil actions for the recovery of fines for violations of this chapter made infractions by EGMC Section 6.22.165 for violations of EGMC Sections 6.22.060 through 6.22.155.

In the performance of the enforcement responsibilities assigned by this chapter, the City Manager shall:

- A. Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred;
- B. Reduce such complaints to writing and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities;
- C. Conduct an on-site inspection of any establishment or facility with respect to which the nature and volume of complaints suggests long-standing and pronounced violation of any of the provisions of this chapter;
- D. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;
- E. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter; and
- F. If the violations do not cease following the expiration of a reasonable period of time, commence civil actions for the recovery of infraction fines pursuant to the provisions of EGMC Section 6.22.165 or request commencement of a civil proceeding by the City Attorney pursuant to the provisions of EGMC Section 6.22.170, as may be appropriate.

The Environmental Health Division shall affirmatively seek the support and cooperation of other local public agencies, such as Cosumnes Community Services District Fire Department, to provide information, assistance and advice in the enforcement of the

provisions of this chapter during the conduct by any of such agencies of on-site inspections of establishments or facilities.

The provisions of EGMC Section 6.22.160 shall not be remedial by either the Chief of Environmental Health or any other City official. Any member of the general public, an employee or applicant for employment may, pursuant to the provisions of this section, commence in his or her name a civil action for injunctive relief, monetary damages or other appropriate relief against a person who violates EGMC Section 6.22.160 pursuant to the provisions of this section. A member of the general public or employee shall also be authorized to individually commence a civil action pursuant to the provisions of this section for injunctive relief, monetary damages or other appropriate relief for the purpose of remedying any other violation of the provisions of this chapter.

## **Chapter 6.26**

### **DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS**

Sections:

6.26.010 Purposes.

6.26.020 Definitions.

6.26.070 Distribution of tobacco products to minors prohibited.

6.26.080 Distribution of tobacco products to minors prohibited – Premises managers.

6.26.090 Proof of age.

6.26.100 Defense – Evidence of majority.

6.26.110 Purchase of tobacco products by minors prohibited.

6.26.120 Posting of signs required.

#### **6.26.010 Purposes.**

The protection of the public welfare requires that potential access by minors to all forms of tobacco products be strictly regulated.

Harvard University and the National Institute on Drug Abuse have reported that the nicotine in tobacco is a powerful, habit-forming drug that leads to compulsive use, and

produces strong withdrawal symptoms. The U.S. Public Health Service has described nicotine addiction as the most widespread example of drug dependence in our country.

Studies have found that nicotine addiction typically begins in childhood. It has been estimated that thousands of American children smoke for the first time every day. Many youth, particularly male teenagers, use smokeless tobacco. Reported tests have shown that minors as young as eleven (11) years of age have experienced little or no difficulty in purchasing tobacco products.

The purpose of this chapter is to reduce the likelihood of minors obtaining tobacco products in the City, by regulation of the potential sources thereof without unduly interfering with permitted transactions or prohibiting tobacco vending machines. This chapter enables affected persons to determine for themselves the methods they will employ to achieve compliance herewith.

#### **6.26.020 Definitions.**

“Distribute” shall mean to sell, give away, or in any way furnish as part of a commercial transaction, including by means of direct retail sale, vending machine sale, or promotional free distribution.

“Person” shall mean an individual, a partnership, corporation, unincorporated association, joint venture or other entity.

“Tobacco product” shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

“Tobacco vending machine” shall mean any electronic or mechanical device the operation of which depends upon the insertion of money, in coin or paper bill, or other thing representative of value, which dispenses or vends a tobacco product.

“Tobacco vending machine owner” shall mean any person who has an ownership or leasehold interest in a tobacco vending machine and who installs or places, or causes to be installed or placed, such tobacco vending machine on any premises for the purpose of distributing a tobacco product therefrom.

#### **6.26.070 Distribution of tobacco products to minors prohibited.**

Any person, including a tobacco vending machine owner, who distributes a tobacco product to a minor who is in fact under the age of eighteen (18) years, whether or not the fact of such minority was known to such person at the time of distribution, is guilty of an infraction.

**6.26.080 Distribution of tobacco products to minors prohibited – Premises managers.**

Any person who authorizes the installation or placement of a tobacco vending machine upon premises which the person manages or otherwise controls and who permits or suffers, knowingly or unknowingly, any tobacco product to be distributed from such vending machine to a minor under the age of eighteen (18) years is guilty of an infraction.

**6.26.090 Proof of age.**

For the purpose of preventing the violation of EGMC Sections 6.26.070 or 6.26.080, any person may refuse to distribute a tobacco product to a person who is unable to produce adequate written evidence that he or she is over the age of eighteen (18) years.

**6.26.100 Defense – Evidence of majority.**

Proof that the defendant, or his employee or agent, demanded, was shown, or acted in reliance upon bona fide evidence of majority and identity in any transaction prohibited by EGMC Sections 6.26.070 or 6.26.080 shall be a defense to any criminal prosecution therefor, or to any civil proceeding based thereon. Bona fide evidence of majority and identity of a person shall be a document issued by a federal, state, county or municipal government, or subdivision or agency thereof, which contains the name, date of birth, description and picture of the person, including, without limitation, a motor vehicle operator's license or an identification card issued to a member of the armed forces.

**6.26.110 Purchase of tobacco products by minors prohibited.**

It shall be unlawful and an infraction for any minor under the age of eighteen (18) years to purchase a tobacco product within the City of Elk Grove.

**6.26.120 Posting of signs required.**

A. Every person who distributes tobacco products within the City of Elk Grove shall post conspicuously and keep so posted in each place of business from which tobacco products are distributed a sign in letters at least one (1") inch high which states as follows:

It is unlawful to distribute tobacco products to a minor under the age of eighteen (18) years. It is unlawful for a minor under the age of eighteen (18) years to purchase tobacco products. EGMC Sections 6.26.070, 6.26.080 and 6.26.110.

C. Every tobacco vending machine owner shall affix and keep affixed to the front of each tobacco vending machine within the City of Elk Grove a sign as described in subsection (A) of this section.

## **Chapter 6.30**

### **PUBLIC CONSUMPTION OF MARIJUANA**

Sections:

6.30.010 Title.

6.30.020 Findings and purposes.

6.30.030 Prohibition.

6.30.040 Penalty.

#### **6.30.010 Title.**

This chapter shall be known as the public consumption of marijuana ordinance.

#### **6.30.020 Findings and purposes.**

On November 5, 1996, the voters of the state of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code. That section permits, for purposes of state law, the limited use, cultivation and possession of marijuana for specified medical purposes.

However, the use, cultivation and possession of marijuana for other purposes remains illegal within this state and is presently illegal under federal laws. Additionally, the use of marijuana by minors has been demonstrated to be a gateway to the use of other illicit substances.

While recognizing the enactment of Section 11362.5 of the Health and Safety Code, the City Council believes that the open and public use of marijuana, which might otherwise be permitted by that section, (A) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and (B) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances.

Therefore, the City Council believes it necessary to balance the uses of marijuana permitted by Section 11362.5, the public health and the need to recognize that possession and use of marijuana for other purposes remains illegal.

#### **6.30.030 Prohibition.**

The consumption of marijuana otherwise permitted by Section 11362.5 of the California Health and Safety Code is hereby prohibited on any public property or in any facility or space to which members of the public have access.

**6.30.040 Penalty.**

Violations of this chapter shall be a misdemeanor punishable by a fine not exceeding One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars, imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

**Title 7**

**HISTORIC PRESERVATION**

**Chapters:**

**7.00 Historic Preservation**

**Chapter 7.00**

**HISTORIC PRESERVATION**

**Sections:**

7.00.010 Purpose.

7.00.020 Applicability.

7.00.030 Definitions.

7.00.040 Historic Preservation Committee.

7.00.050 Designations.

7.00.060 Rescissions.

7.00.070 Alterations.

7.00.080 Demolitions/relocations.

7.00.090 Archaeological resources and traditional cultural properties.

7.00.100 Historic preservation incentives.

7.00.110 Unsafe or dangerous conditions.

7.00.120 Duty to keep in good repair.

7.00.130 Showing of extreme hardship.

7.00.140 Enforcement.

7.00.150 Fees.

7.00.160 Accessibility.

**7.00.010 Purpose.**

The purpose of this chapter is to promote the general welfare and economic and social vitality of the people and City of Elk Grove by providing for the identification, designation, protection, enhancement, perpetuation and use of historic resources including buildings, structures, objects, sites, districts, and cultural landscapes within the City that reflect special elements of the City's heritage and cultural diversity for the following reasons:

- A. To encourage public knowledge, understanding, appreciation, and use of the City's past;
- B. To foster civic pride in the beauty and character of the City and in the accomplishments of its past;
- C. To enhance the visual character of the City by encouraging reuse of old buildings and construction that complements nearby historic resources;
- D. To increase the economic benefits of historic resource preservation to the City and its inhabitants;
- E. To protect property values within the City;
- F. To identify as early as possible and resolve conflicts between the preservation of historic resources and alternative land uses; and
- G. To conserve valuable material and energy resources by ongoing use and maintenance of the built and natural environment.

**7.00.020 Applicability.**

The historic preservation ordinance shall be applied to historic resources and resources potentially eligible for historic designation, and shall include those resources affected by any project proposed by the City of Elk Grove or subject to review by the City of Elk

Grove. A property that has been designated an Elk Grove landmark, an Elk Grove heritage resource, or possessing any other state or federal historical designation shall continue to be subject to all zoning ordinances that would apply to such property if it were not so designated or located. By designating historic resources the City Council shall not be construed to be repealing or waiving any other portion of the zoning ordinance of the City as it applies to the designated property. Resources potentially eligible for historic designation are only subject to limited portions of this chapter specifically targeted toward preventing the loss of resources not yet surveyed for their significance.

#### **7.00.030 Definitions.**

For the purpose of this chapter the following words shall have the meanings respectively ascribed to them by this section:

A. "Alteration" means any exterior change or modification, through public or private action, of any historic resource, to include any action that might damage the integrity of that resource. Alterations include but are not limited to the disturbance of archaeological resources; the emplacement of concrete flatwork or other paving; repainting in anything other than matching colors; replacement of doors, windows, and lighting; construction of new buildings, structures, or objects; additions to existing buildings, structures, or objects; and the placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, plantings and landscape accessories that affect the exterior visual qualities of the property.

B. "Archaeological resources" means archaeological artifacts, objects, or sites.

C. "Building" means a resource created principally to shelter any form of human activity, such as a house.

D. "California Environmental Quality Act (CEQA)" means Section 21000 et seq. of the California Public Resources Code and its related guidelines as it may be amended.

E. "Complete application" means enough documentation for the approving authority to make an informed decision concerning the application. All applications should include the most recent version of the appropriate State of California Department of Parks and Recreation (DPR) 523 series survey form completed according to the State Office of Historic Preservation's Instructions for Recording Historical Resources but in certain circumstances the Historic Preservation Committee may instead permit the use of a National Register of Historic Places nomination form. The Historic Preservation



Committee shall determine and amend lists of materials needed for complete applications as needed by resolution.

F. "Certificate of appropriateness" means a certificate whose issuance is recommended by the Historic Preservation Committee and which authorizes its recipient to make specified exterior alterations to a historic resource.

G. "Certified local government (CLG)" means a local government that has been certified by the National Park Service to carry out the purposes of the National Historic Preservation Act of 1966 (Title 16, Section 470 et seq. of the United States Code) as amended, pursuant to Section 101(c) of that Act and the regulations adopted under the Act, which are set forth in Part 61 of Title 36 of the Code of Federal Regulations (CFR).

H. "Character-defining feature" means the architectural features of a building, structure, or object that help convey the significance of the historic resource and which were present during the period of significance.

I. "Contributing resource" means a building, site, structure, or object that adds to the significance of a historic resource.

J. "Cultural landscape" means a geographic area which, including both cultural and natural resources, is associated with a historic event, activity, or person, or exhibits other cultural or aesthetic values. There are four (4) general types of cultural landscapes, not mutually exclusive: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

K. "Demolition" means any action or set of actions that results in a historic resource being completely torn down.

L. "Demolition/relocation certificate" means a certificate whose issuance is recommended by the Historic Preservation Committee and which authorizes its recipient to demolish, remove, or relocate a historic resource.

M. "Designation" means the act of formally listing a historic resource in a register of historic resources such as the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places.

N. "District" means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. Examples include college campuses; central business districts; residential areas; commercial areas; large forts; industrial complexes; civic centers; rural villages; canal systems; collections of habitation and limited activity sites; irrigation systems; large farms, ranches, estates, or plantations; transportation networks; and large landscaped parks.

O. "Elk Grove heritage resource" means a historic resource of value to the citizens of the City of Elk Grove and designated as such by the City Council pursuant to the provisions of this chapter. Once designated, Elk Grove heritage resources are included in the Elk Grove register of historic resources. These resources meet the definition of a historic resource under the California Environmental Quality Act (CEQA).

P. "Elk Grove landmark" means a historic resource of high value to the citizens of the City of Elk Grove and designated as such by the City Council pursuant to the provisions of this chapter. Once designated, Elk Grove landmarks are included in the Elk Grove register of historic resources. These resources meet the definition of a historic resource under the California Environmental Quality Act (CEQA).

Q. "Elk Grove register of historic resources" means the list of designated Elk Grove landmarks and Elk Grove heritage resources.

R. "Exceptional importance" means historical significance due to an association with an extraordinarily important aspect of the past or existence in a category of resources so fragile that survivors of any age are unusual. Sufficient historical perspective must exist to ensure a determination of exceptional importance is not simply a fad. Exceptionally important resources may be significant at the local, state, or national level.

S. "Guidelines for Local Surveys: A Basis for Preservation Planning" means the standards set forward by the National Park Service and the Secretary of the Interior that guide comprehensive planning, surveys of historic resources, and registration in the National Register of Historic Places.

T. "Guidelines for Evaluating and Documenting Traditional Cultural Properties" means the standards set forward by the National Park Service and the Secretary of the Interior that guide the identification of traditional cultural properties.

U. "Historic context" means an organizing structure for interpreting history that groups information about historic resources which share a common theme, common geographical location, and common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic resources, based upon comparative significance.

V. "Historic district" means a district listed in or eligible for listing in the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places. Historic districts can include historic resources individually listed in or eligible for listing in the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places. Historic districts meet the definition of a historic resource under the California Environmental Quality Act (CEQA).

W. "Historic district plan" means the documentation, planning, and guiding document for a historic district.

X. "Historic preservation" means the management (including but not limited to preservation) of properties significant within a given historic context that retain the integrity of those features necessary to communicate that significance.

Y. "Historic resource" means buildings, structures, objects, sites, districts, or cultural landscapes listed in or eligible for listing in the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places, to include resources identified as cultural, archaeological, or prehistoric resources.

Z. "Historic resource inventory" means a list of historic resources.

AA. "Historical survey" means an investigation supervised by a trained professional to determine whether properties in the survey area are eligible for listing in the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places.

BB. "Integrity" means the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance. Historic resources must possess integrity to convey their significance. The seven (7) aspects of integrity are location, design, setting, materials, workmanship, feeling and association, as defined by Title 14, Division 3, Chapter 11.5, Section 4852(c) of the California Code of Regulations (CCR) and the National Register of Historic Places. To retain integrity a property will always possess several, and usually most, of the aspects.

CC. "Minor improvement permit" means an over-the-counter approval for ordinary maintenance and repair of exterior features at or on historic resources. DD. "Noncontributing resource" means a building, site, structure, or object that does not add to the significance of a historic resource, but is nevertheless a component of that historic resource. EE. "Noteworthy" means a level of significance lower than that required for designation as an Elk Grove landmark but which is still important to the community's history.

FF. "Object" means those constructions that are distinguished from buildings and structures, that are primarily artistic in nature or are relatively small in scale and simply constructed. Although they may be, by nature or design, movable, objects are associated with a specific setting or environment. Examples include sculpture, monuments, boundary markers, statuary, and fountains.

GG. "Outstanding local historical significance" means historical significance due to an association with a very important aspect of the area's past. Such resources represent aspects of the past important to average citizens (as opposed to historical professionals) because of the resource's continuance of a historical function or through its ongoing interpretation of the past.

HH. "Period of significance" means the span of time that a property attained the characteristics that qualify it for designation.

II. "Relocation" means the movement of a historic resource from its original site to a new site, beyond minor movement of the resource on its original lot.

JJ. "Replacement project" means any proposal for the use of land following the demolition of a historic resource or element of a historic resource. Vacancy is not considered a replacement project.

KK. "Resources potentially eligible for historic designation" means resources at least fifty (50) years old whose eligibility for listing in the Elk Grove register of historic resources, the California Register of Historical Resources, or the National Register of Historic Places has not been formally determined.

LL. "Significance" means the importance of a historic property as defined by criteria adopted by this chapter, the California Register of Historical Resources, or the National Register of Historic Places.

MM. "Site" means the location of a significant event, a historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic or archeological value regardless of the value of any existing structure. Examples include habitation sites, funerary sites, rock shelters, village sites, hunting and fishing sites, ceremonial sites, petroglyphs, rock carvings, gardens, grounds, battlefields, ruins of historic buildings and structures, campsites, sites of treaty signings, trails, areas of land, shipwrecks, cemeteries, designed landscapes, and natural features, such as springs and rock formations, and land areas having historic significance.

NN. "State of California Department of Parks and Recreation (DPR) survey forms" means the current official State of California forms, completed by qualified individuals, that contain information about a historic resource.

OO. "State Historical Building Code (SHBC)" means the standards adopted by the State of California to provide regulations and standards for the rehabilitation, preservation, restoration (including related reconstruction) or relocation as applicable to all historical

buildings, structures and properties deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction.

PP. "Structure" means those functional constructions made usually for purposes other than creating human shelter (buildings). Examples include bridges, tunnels, power plants, corncribs, silos, roadways, windmills, grain elevators, kilns, mounds, cairns, earthworks, railroad grades, systems of roadways and paths, boats and ships, railroad locomotives and cars, telescopes, carousels, bandstands, gazebos, aircraft, water towers, barns, and air raid observation posts.

QQ. "Substantial adverse change" means any demolition, relocation, or alteration that destroys the integrity of a historic resource.

RR. "Survey" means systematically studying historic resources in accordance with published federal and state standards. Minimally, it includes a physical description and a photograph of a historic resource, legal information from title or assessor's office records, statements of significance according to criteria in this chapter, and a statement identifying any potential threat to the integrity or existence of the historic resource.

SS. "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" means the standards set forward by the National Park Service and the Secretary of the Interior that guide treatment of historic properties (36 CFR, Part 68, July 1995 Federal Register Vol. 60, No. 133). These standards guide preservation efforts in the City of Elk Grove.

TT. "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes" means the standards set forward by the National Park Service and the Secretary of the Interior that guide treatment of cultural landscapes.

#### **7.00.040 Historic Preservation Committee.**

A Historic Preservation Committee of the City is hereby established.

A. Membership of the Historic Preservation Committee. Each member of the Historic Preservation Committee must be at least eighteen (18) years of age, reside in the City of Elk Grove, and be registered to vote. Committee members shall not be City staff. The members of the Historic Preservation Committee shall include persons who have demonstrated special interests, competence, experience, or knowledge in historic preservation. The makeup of the Historic Preservation Committee should meet the professional qualification standards of a certified local government, to include having at least two (2) Committee members who are professionals in the disciplines of history,

architecture, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, or landscape architecture or related disciplines, such as urban planning, American studies, American civilization, or cultural geography, to the extent that such professionals are available in the community. Members of the Historic Preservation Committee are subject to the laws governing conflicts of interest applicable to appointed government officials. One (1) member of the Historic Preservation Committee shall be a member and official representative of the Elk Grove Historical Society. One (1) member of the Historic Preservation Committee shall be a member and official representative of the Old Town Elk Grove Foundation.

B. Appointments of Members. The membership of the Historic Preservation Committee shall consist of seven (7) regular members and one (1) alternate member. All such appointments shall be by vote of not less than three (3) Council Members.

C. Term of Office of Members. The term of office of all members of the Historic Preservation Committee shall be two (2) years; provided, that such members first appointed shall so classify themselves by lot, that three (3) members shall terminate their term of office on the first day of January between two (2) and three (3) years after their appointment, and four (4) members shall terminate their term of office on the first day of January between three (3) and four (4) years after their appointment. The availability of each position shall be advertised in advance of the expiration of its term and applications for membership shall be accepted by the City Clerk following the advertisement.

D. Vacancy. Vacancies on the Historic Preservation Committee, from whatever cause, shall be filled by the City Council by vote of not less than three (3) Council Members within sixty (60) days of the vacancy.

E. Automatic Termination of Appointment. The appointment of any member of the Historic Preservation Committee who has been absent from three (3) consecutive regular or special meetings, without the prior approval of the Historic Preservation Committee chairperson, shall automatically terminate.

F. Chairperson of the Historic Preservation Committee. The Historic Preservation Committee shall elect a chairperson from its members, who shall hold office for one (1) year or until his or her successor is elected, unless his or her term as a member of the Historic Preservation Committee expires sooner. The chairperson shall be elected at the first meeting of the Historic Preservation Committee after January 1st of each year.

G. Meetings of the Historic Preservation Committee. The Historic Preservation Committee shall establish a regular time and place of meeting. The Historic Preservation Committee shall hold no less than four (4) meetings per year or as required to hear applications in a timely manner. Special meetings of the Historic

Preservation Committee may be called at any time by the chairperson of the Historic Preservation Committee, upon personal notice being given to all members of the Historic Preservation Committee. If personal notice cannot be given, written notice must be mailed to all members at least seventy-two (72) hours prior to said meeting, unless said notice requirement is waived in writing by said member prior to the meeting or by being present at the meeting. Meetings of the Historic Preservation Committee shall be held, and notice given, in conformance with Sections 54951.1 through 54961 of the California Government Code (the Ralph M. Brown Act).

H. Organization and Procedure. Four (4) of the seven (7) members shall constitute a quorum. The affirmative vote of a majority of the members present and voting is required to take any action. The Historic Preservation Committee shall keep an accurate record of its proceedings and transactions and shall submit an annual report to the City Council.

I. Powers and Duties. The Historic Preservation Committee shall have the following powers and duties under this chapter:

1. Maintain, publicize, and periodically update a local historic resource inventory listing all historic resources within the City, using guidance presented in "Guidelines for Local Surveys: A Basis for Preservation Planning," to include administering and adopting the results of historical surveys;
2. Attain and maintain certified local government status;
3. Recommend the designation and rescission of historic resources as Elk Grove landmarks or Elk Grove heritage resources to the City Council;
4. Recommend the approval or disapproval, with or without conditions, of applications for certificates of appropriateness;
5. Recommend the approval or disapproval, with or without conditions, of applications for demolition/relocation certificates;
6. Perform advisory review of new buildings, structures, objects, and demolitions on lots immediately adjacent to designated historic resources in cases where the City has discretionary review over these projects (as defined by the California Environmental Quality Act);
7. Review historic district plans;
8. Investigate and report to the City Council on the use of various federal, state, local, or private funding sources, incentives and other mechanisms available to promote historic preservation in the City;

9. Develop and review a comprehensive local historic preservation plan;
10. Review and comment on decisions and documents developed using the California Environmental Quality Act, the National Historic Preservation Act of 1966 (Title 16, Section 470 et seq. of the United States Code), and other laws that require consideration of the effects of projects on historic resources when such decisions or documents may affect historic resources or resources potentially eligible for historic designation in the City;
11. Cooperate with local, county, state, and federal governments in the pursuit of the objectives of historic preservation;
12. Participate in, promote, and conduct public information, educational and interpretive programs, newsletters, and appropriate literature pertaining to all types of historic resources to owners of historic resources, building contractors, the Chamber of Commerce, area realtors, and any member of the public requesting such information;
13. Render advice and guidance, upon the request of the property owner or occupant, on the restoration, alteration, decoration, landscaping, or maintenance of any historic resource;
14. Provide for adequate public participation in local historic preservation programs, including the process of recommending properties for nomination to the Elk Grove register of historic resources, the California Register of Historical Resources, and the National Register of Historic Places;
15. In the case of historic resources that may be demolished or relocated, take steps to aid in the preservation of historic resources, to include consultation with civic groups, public agencies, and interested citizens; recommendations for acquisition of the property by public or private bodies or agencies; and exploration of the possibility of moving such resources; and
16. Perform any other functions designated by the City Council or required by the state of California's Certified Local Government Program.

#### **7.00.050 Designations.**

A. Elk Grove Landmark Designation Criteria. Upon the recommendation of the Historic Preservation Committee and approval of the City Council, historic resources may be designated Elk Grove landmarks if the resources meet any of the following four criteria at the local, state, or national level of significance within a given historic context and retain their integrity:



1. Associated with events that have made a significant contribution to the broad patterns of our history;
2. Associated with the lives of persons significant in our past;
3. Embodies the distinctive characteristics of a type, period, or method of construction; or that represents the work of a master; or that possesses high artistic values; or that represents a significant and distinguishable entity whose components may lack individual distinction; or
4. Has yielded, or may be likely to yield, information important in prehistory or history.

B. Additional Elk Grove Landmark Designation Criteria. Upon the recommendation of the Historic Preservation Committee and approval of the City Council, historic resources may be designated Elk Grove landmarks if the resources meet any of the following two additional criteria at the local, state, or national level of significance within a given historic context:

1. Possesses all seven aspects of integrity and embodies an important aspect of history which is not significant enough to merit consideration under other criteria; or
2. Possesses outstanding historical significance and would meet one (1) of the other criteria if the resource possessed integrity.

C. Elk Grove Heritage Resource Designation Criteria. Upon the recommendation of the Historic Preservation Committee and approval of the City Council, historic resources may be designated Elk Grove heritage resources if the resources meet any of the following four (4) criteria at the local, state, or national level of significance within a given historic context and retain at least three (3) aspects of integrity, provided the majority of the resource's period of significance is prior to 1941:

1. Associated with events that have made a noteworthy contribution to the broad patterns of our history;
2. Associated with the lives of persons noteworthy in our past;
3. Embodies the distinctive characteristics of a noteworthy type, period, or method of construction; or
4. Has yielded, or may be likely to yield, information noteworthy in prehistory or history.

D. Criteria Considerations. Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have

achieved significance within the past fifty (50) years shall not be considered eligible for designation as Elk Grove landmarks. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within any of the following categories:

1. A religious property deriving primary significance from architectural or artistic distinction or historical importance, provided the property owner does not successfully seek exclusion consistent with Section 37361 of the California Government Code;
2. A building or structure removed from its original location but which is primarily significant for architectural value or which is the surviving structure most importantly associated with a historic person or event;
3. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building associated with his or her productive life;
4. A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;
5. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;
6. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance;
7. A property achieving significance within the past fifty (50) years if it is of exceptional importance; or
8. A property that possesses outstanding local historical significance.

E. Historic District Plan. Upon the recommendation of the Historic Preservation Committee and approval of the City Council, a historic district plan shall be adopted simultaneously with designation. The historic district plan shall provide standards for review within that particular district to ensure that new development, renovation, and rehabilitation are compatible and complementary to the prevalent character-defining features, architectural styles, historic context, and design elements within the historic district. The Historic Preservation Committee shall publish such standards as are necessary to supplement the provisions of this chapter to inform the public of those standards of review by which historic district plans are to be judged.

F. Designation Process. Historic resources shall be designated by the City Council upon the recommendation of the Historic Preservation Committee.

1. Initiation of Designation. Designation of Elk Grove landmarks or Elk Grove heritage resources may be initiated by the Historic Preservation Committee, by any resident of Elk Grove, or by the owner of the property that is proposed for designation.

2. Public Hearing. The Historic Preservation Committee shall hold a public hearing to review and act upon the designation application.

3. Stay of Work. While the Historic Preservation Committee's public hearing on a recommendation or the City Council's decision on a designation is pending, no work that would require a minor improvement permit, a certificate of appropriateness, or a demolition/relocation certificate shall be conducted.

4. Notice of Public Hearing. Notice of date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the property, and to property owners within five hundred (500' 0") feet of the property, at least ten (10) days prior to the date of the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be advertised once (1) in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing. Failure to receive notice of such hearing shall in no way affect the validity of any action taken.

5. Owner Objection – Resources Not Part of Historic Districts. The owner of a historic resource can object to designation of his or her resource as an Elk Grove landmark or Elk Grove heritage resource by formally expressing this objection to the Historic Preservation Committee prior to or during the designation hearing for the resource in question. The Historic Preservation Committee must abide by this objection. This subsection in no way changes the eligibility of the resource(s) in question for local, state, or national listings of historic properties.

6. Owner Objection – Contributing and Noncontributing Resources within a Historic District. Owner objections to the designation of a proposed historic district must be expressed in writing prior to or during that proposed historic district's designation recommendation hearing. If a majority of owners within a proposed historic district object to the designation of that proposed historic district, then the Historic Preservation Commission must abide by this objection and not recommend the designation of that proposed historic district. Regardless of how much property each owner or partial owner owns within a proposed historic district, each owner or partial owner of property within a proposed historic district may make only one (1) objection regarding designation.

7. Historic Preservation Committee Recommendations. The Historic Preservation Committee shall recommend approval in whole or in part or disapproval of the application for designation in writing to the City Council, setting forth the reasons for the decision.

8. Approval of Historic Preservation Committee Recommendations. After receiving the Historic Preservation Committee's recommendations the City Council shall pass a resolution to approve the recommendations in whole or in part, or shall by motion disapprove them in their entirety. If the City Council approves a proposed designation, notice of the City Council's decision shall be sent to the applicant, owners of the property, Community Enhancement, and the Building Official.

#### **7.00.060 Rescissions.**

A. Grounds for Rescission. Upon the recommendation of the Historic Preservation Committee and approval of the City Council, historic resources may be removed from the Elk Grove register of historic resources if any of the following criteria are met:

1. The property has ceased to meet the criteria for listing in the Elk Grove register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

2. Additional information shows that the property does not meet the Elk Grove register criteria for evaluation;

3. Error in professional judgment as to whether the property meets the criteria for evaluation; or

4. Prejudicial procedural error in the nomination or listing process. Properties removed from the Elk Grove register of historic resources for procedural error shall be reconsidered for listing by the Historic Preservation Committee after correction of the error or errors. The procedures set forth for designations shall be followed in such reconsiderations. Any resource removed from the Elk Grove register of historic resources for procedural deficiencies in the nomination and/or listing process shall automatically be considered eligible for listing in the Elk Grove register of historic resources without further action.

B. Rescission Process. Historic resources shall be removed from the Elk Grove register of historic resources by the City Council upon the recommendation of the Historic Preservation Committee.

1. Initiation of Rescission. Rescission of resources listed on the Elk Grove landmarks register may be initiated by the Historic Preservation Committee, by any resident of Elk Grove, or by the owner of the property that is proposed for rescission. The applicant must communicate in writing the reasons the property should be removed.

2. Public Hearing. The Historic Preservation Committee shall hold a public hearing to review and act upon the rescission application.

3. Notice of Public Hearing. Notice of date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the property, and to property owners within five hundred (500' 0") feet of the property, at least ten (10) days prior to the date of the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be advertised once (1) in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing. Failure to receive notice of such hearing shall in no way affect the validity of any action taken.

4. Historic Preservation Committee Recommendations. The Historic Preservation Committee shall recommend approval in whole or in part or disapproval of the application for rescission in writing to the City Council, setting forth the reasons for the decision.

5. Approval of Historic Preservation Committee Recommendations. After receiving the Historic Preservation Committee's recommendations the City Council shall pass a resolution to approve the recommendations in whole or in part, or shall by motion disapprove them in their entirety. If the City Council approves a proposed rescission, notice of the City Council's decision shall be sent to the applicant, owners of the property, Community Enhancement, and the Building Official.

#### **7.00.070 Alterations.**

No exterior alterations shall be made to any historic resource without a minor improvement permit or a certificate of appropriateness.

##### **A. Minor Improvement Permits.**

1. Purpose. The purpose of the minor improvement permit is to allow efficient processing of applications for minor alterations to historic resources in general and all alterations to Elk Grove heritage resources.

2. Standards of Review. The Historic Preservation Committee shall publish such standards as are necessary to supplement the provisions of this chapter to inform the public of those standards of review by which applications for minor improvement permits are to be judged.

3. Approving Authority. The Planning Director shall be the approving authority for all minor improvement permit applications.

4. Action by Approving Authority. The Planning Director shall approve or deny the application. Notice of the decision shall be sent to the Historic Preservation Committee, the applicant, owners of the property, Community Enhancement, and the Building Official.

5. Appeals. Any decision of the Planning Director on a minor improvement permit may be appealed to the Planning Commission. Any decision on appeal by the Planning Commission on a minor improvement permit may be appealed to the City Council. Any action or decision of the City Council shall be final and there shall be no further administrative appeal from the City Council decision. All appeals shall be in writing, shall state the basis of the appeal, shall be accompanied by any applicable filing fee, and shall be filed with the City Clerk within ten (10) days of the determination or action for which an appeal is made. Failure to file an appeal within the time frame and in the manner provided herein shall constitute a failure of a party to exhaust administrative remedies, and shall render the decision of the approving authority final and immune from further challenge.

6. Findings.

a. Contributing and Noncontributing Resources Not Listed as Elk Grove Heritage Resources. Minor improvement permit applications for proposed work to contributing and noncontributing resources not listed as Elk Grove heritage resources shall be approved if:

- i. The proposed project complies with “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings” or “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes”; and
- ii. The proposed work does not result in substantial adverse change to the contributing resource; and
- iii. The proposed project is consistent with and supportive of the goals and policies of the adopted historic district plan (if the resource is located within a historic district).

b. Elk Grove Heritage Resources.

- i. Contributing Resources.

(A) Minor improvement permit applications for proposed work to contributing resources listed as Elk Grove heritage resources shall be approved if:

(1) The proposed alterations preserve historic materials, replacing irreparable historic materials with matching materials to the greatest extent feasible; and

(2) New additions to the resource occur on nonhistoric portions of the property or on the half of the property least visible from the public right-of-way; and

(3) New additions to the resource are differentiated from the old and compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment; and

(4) The proposed project is consistent with and supportive of the goals and policies of the adopted historic district plan (if the resource is located within a historic district).

ii. Noncontributing Resources.

(A) The proposed project is consistent with and supportive of the goals and policies of the adopted historic district plan.

B. Certificates of Appropriateness.

1. Purpose. The purpose of the certificate of appropriateness is to provide sufficient opportunities for review of proposed alterations to all historic resources besides Elk Grove heritage resources.

2. Standards of Review. The Historic Preservation Committee shall publish such standards as are necessary to supplement the provisions of this chapter to inform the public of those standards of review by which applications for certificates of appropriateness are to be judged.

3. Public Hearing. The Historic Preservation Committee shall hold a public hearing to review and act upon the certificate of appropriateness application.

4. Notice of Public Hearing. Notice of date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the property, and to property owners within five hundred (500' 0") feet of the property, at least ten (10) days prior to the date of the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be advertised once (1) in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing. Failure to receive notice of such hearing shall in no way affect the validity of any action taken.

5. Approving Authority. The Historic Preservation Committee shall recommend approval or denial, with or without conditions, of all applications for certificates of appropriateness. If an entitlement other than or in addition to a certificate of appropriateness is necessary or sought for a proposed project, the approving authority shall be that body with jurisdiction over the other entitlement as set forth in the Elk Grove Municipal Code, including, but not limited to, the Zoning Code, as it now exists or is hereafter amended. When a proposed project requires more than one (1) land use or development entitlement from more than one (1) approving authority, all project entitlements shall be processed concurrently and final action shall be taken on any

application for a certificate of appropriateness by the highest level designated approving authority for all such requested entitlements. The Planning Director shall be the approving authority of all applications for certificates of appropriateness for which there is no other approving authority with jurisdiction over the project.

6. Appeals. Any decision of the Planning Director on a certificate of appropriateness may be appealed to the Planning Commission. Any decision of the Planning Commission on a certificate of appropriateness may be appealed to the City Council, including matters heard on appeal from a decision of the Planning Director. Any other decision by an approving authority not otherwise addressed herein may be appealed to the City Council. Any action or decision of the City Council shall be final and there shall be no further administrative appeal from the City Council decision. All appeals shall be in writing, shall state the basis of the appeal, shall be accompanied by any applicable filing fee, and shall be filed with the City Clerk within ten (10) days of the determination or action for which an appeal is made. Failure to file an appeal within the time frame and in the manner provided herein shall constitute a failure of a party to exhaust administrative remedies, and shall render the decision of the approving authority final and immune from further challenge.

7. Action by Approving Authority. The approving authority shall approve an application, disapprove it, or approve it subject to conditions. Notice of the decision shall be sent to the applicant, owners of the property, Community Enhancement, and the Building Official.

8. Findings.

a. Contributing Resources. Certificate of appropriateness applications for proposed work to contributing resources shall be approved if:

- i. The proposed work does not result in substantial adverse change to the contributing resource; and
- ii. The proposed project is consistent with and supportive of the goals and policies of the adopted historic district plan (if the resource is located within a historic district).

b. Noncontributing Resources. Certificate of appropriateness applications for proposed work to noncontributing resources shall be approved if:

- i. The proposed work does not result in a substantial adverse change to the historic resource as a whole; and



- ii. The proposed project is consistent with and supportive of the goals and policies of the adopted historic district plan (if the resource is located within a historic district).

#### **7.00.080 Demolitions/relocations.**

A. Demolition or Relocation of Resources Potentially Eligible for Historic Designation. The demolition or relocation of resources potentially eligible for historic designation shall not occur without review to determine whether the City can rule out the possibility of the resource being designated an Elk Grove landmark or Elk Grove heritage resource.

1. Purpose. The purpose of reviewing the demolition/relocation of resources potentially eligible for historic designation is to ensure resources that reflect special elements of the City's heritage and cultural diversity are not unwittingly destroyed by an act of the City.

2. Standards of Review. Before demolitions or relocations of resources potentially eligible for historic designation are approved, the Planning Director shall determine whether the City can rule out the possibility of the resource being designated an Elk Grove landmark or Elk Grove heritage resource. The Planning Director shall rule out the possibility of the resource in question being designated an Elk Grove landmark or Elk Grove heritage resource if any of the following conditions are met:

- a. The resource is less than fifty (50) years old;
- b. The resource is a cemetery or grave;
- c. The resource is owned by a religious institution or used for religious purposes;
- d. The resource has been moved from its original location;
- e. The resource is a reconstructed historic building;
- f. The resource is primarily commemorative in nature; or
- g. The Historic Preservation Committee formally determines the resource in question is not eligible for designation as an Elk Grove landmark.

3. Approving Authority. The Planning Director shall determine whether the City can rule out the possibility of the resource being designated an Elk Grove landmark or Elk Grove heritage resource.

4. Action by Approving Authority. If the Planning Director determines the City can rule out the possibility of the resource being designated an Elk Grove landmark or Elk Grove heritage resource, he or she shall recommend approval of the demolition or relocation of the resource in question to the Building Official. If the Planning Director determines

the City cannot rule out the possibility of the resource being designated an Elk Grove landmark or Elk Grove heritage resource, the Historic Preservation Committee shall initiate an application for designation of the resource in question as an Elk Grove landmark or Elk Grove heritage resource. Notice of the determination shall be sent to the applicant, owners of the property, and the Building Official.

**B. Demolition/Relocation Certificates.** No demolition or relocation of a historic resource shall be made by any person without a demolition/relocation certificate.

1. **Purpose.** The purpose of the demolition/relocation certificate is to provide a last alternative for use in the treatment of historic resources.

2. **Standards of Review.** The Historic Preservation Committee shall publish such standards as are necessary to supplement the provisions of this chapter to inform the public of those standards of review by which applications for demolition/relocation certificates are to be judged. Demolition or relocation of historic resources shall be tied to a replacement project under concurrent review by the City of Elk Grove unless projects meet the provisions of EGMC Section 7.00.110 or 7.00.130. Relocating a historic resource can be an acceptable alternative to demolition if the Historic Preservation Committee finds that the relocation allows the historic resource to maintain its integrity.

3. **Public Hearing.** The Historic Preservation Committee shall hold a public hearing to review and act upon the demolition/relocation certificate application.

4. **Notice of Public Hearing.** Notice of date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of the property, and to property owners within five hundred (500' 0") feet of the property, at least ten (10) days prior to the date of the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be advertised once (1) in a daily newspaper of general circulation at least ten (10) days in advance of the public hearing. Failure to receive notice of such hearing shall in no way affect the validity of any action taken.

5. **Approving Authority.** The Historic Preservation Committee shall recommend approval or denial, with or without conditions, of all applications for certificates of demolition/relocation. If an entitlement other than or in addition to a certificate of demolition/relocation is necessary or sought for a proposed project, the approving authority shall be that body with jurisdiction over the other entitlement as set forth in the Elk Grove Municipal Code, including, but not limited to, the Zoning Code, as it now exists or is hereafter amended. When a proposed project requires more than one (1) land use or development entitlement from more than one (1) approving authority, all project entitlements shall be processed concurrently and final action shall be taken on

any application for a certificate of demolition/relocation by the highest level designated approving authority for all such requested entitlements. The Planning Director shall be the approving authority of all applications for certificates of demolition/relocation for which there is no other approving authority with jurisdiction over the project. Any decision of the Planning Director on a certificate of demolition/relocation may be appealed to the Planning Commission. Any decision of the Planning Commission on a certificate of demolition/relocation may be appealed to the City Council, including matters heard on appeal from a decision of the Planning Director. Any other decision by an approving authority not otherwise addressed herein may be appealed to the City Council. Any action or decision of the City Council shall be final and there shall be no further administrative appeal from the City Council decision. All appeals shall be in writing, shall state the basis of the appeal, shall be accompanied by any applicable filing fee, and shall be filed with the City Clerk within ten (10) days of the determination or action for which an appeal is made. Failure to file an appeal within the time frame and in the manner provided herein shall constitute a failure of a party to exhaust administrative remedies, and shall render the decision of the approving authority final and immune from further challenge.

6. Action by Approving Authority. The approving authority shall approve an application, disapprove it, or approve it subject to conditions. Wherever applicable, the approving authority can require the documentation of the historic resource proposed for demolition or relocation with such measures as archival-quality photographs and/or measured drawings prior to these actions. Notice of the decision shall be sent to the applicant, owners of the property, Community Enhancement, and the Building Official.

## 7. Findings.

- a. Contributing Resources. Demolition/relocation certificate applications for contributing resources shall be approved if the project meets either of the following:
  - i. The provisions of EGMC Section 7.00.110 or 7.00.130; or
  - ii. The replacement project is consistent with and supportive of identified goals and policies of the General Plan or applicable specific area plans including the adopted historic district plan (if the resource is located within a historic district); the proposed action will not have a significant effect on the goals and purposes of this chapter or the potential effect is outweighed by significant benefits of the replacement project; and in the case of relocating a contributing resource, the integrity and significance of both the contributing resource and the entire district (if the resource is located within a historic district) will not be significantly impaired.

- b. Noncontributing Resources. Demolition/relocation certificate applications for noncontributing resources shall be approved if the project meets the provisions of EGMC Section 7.00.110 or 7.00.130 or if the replacement project is consistent with and supportive of identified goals and policies of the General Plan or applicable or specific area plans including the adopted historic district plan (if the resource is located within a historic district).

#### **7.00.090 Archaeological resources and traditional cultural properties.**

A. Special Consideration. The City's archaeological resources and traditional cultural properties (as defined in "Guidelines for Evaluating and Documenting Traditional Cultural Properties") are part of its heritage, unique character, and community fabric. These resources are key to the City's past and are an integral part of the dynamic local Native American community. These resources are irreplaceable and need to be protected from deterioration and site damage. Although archaeological resources and traditional cultural properties are considered historic resources under this chapter, the City acknowledges their distinct differences and expresses its intent to identify, protect, and encourage the preservation of significant archaeological resources and traditional cultural properties in the City.

B. Inventory. The City shall provide a mechanism through surveys, nominations, or other means (e.g., archival research and interviews) to compile, update and maintain an inventory of traditional cultural properties, archaeological sites, and potentially sensitive archaeological areas within its boundaries. The inventory shall help to ensure these resources are preserved, protected, and enhanced to the fullest extent feasible. The inventory shall also include a comprehensive contextual statement regarding the significant archaeological resources and traditional cultural properties in the City. Projects that may affect known traditional cultural properties, archaeological sites, and/or archaeologically sensitive areas shall not be approved without conducting CEQA review. In these cases Section 10564.5 of the California Code of Regulations and Sections 21083.2 and 21084.1 of the California Public Resources Code shall be followed to determine the significance of potential impacts on archaeological resources. The City also understands the need to protect the location of archaeological sites and traditional cultural properties. Information regarding the location of such resources shall not be made publicly available per the California Public Records Act (Sections 6254(r) and 6254.10 of the Government Code).

#### **7.00.100 Historic preservation incentives.**

A. Designated Historic Resources. In addition to numerous historic preservation incentives offered by the state and federal governments and private organizations, the following preservation incentives shall be made available to contributing resources listed

on the National Register of Historic Places, contributing resources listed on the California Register of Historical Resources, or contributing resources which are designated Elk Grove landmarks.

1. Application of the California State Historical Building Code (Title 24, Part 8, Section 8-101.1 et seq. of the California Code of Regulations).

2. Establishment of the historic use (defined as the use during the resource's period of significance) even if that use is not allowed in the underlying zone.

3. Mills Act Contracts (Section 50280 et seq. of the Government Code).

a. The City shall process Mills Act contract applications pursuant to the Mills Act.

b. The Historic Preservation Committee shall be the approval body for all Mills Act contract applications.

c. A Mills Act contract application that is denied by the Historic Preservation Committee cannot be resubmitted for one (1) year after the date of denial.

4. Preservation Easements. Preservation easements on the facades of qualifying properties may be acquired by the City or nonprofit group through purchase, donation, or documentation pursuant to Section 815 of the California Civil Code.

5. Official Recognition.

a. Elk Grove Preservation Awards. The Historic Preservation Committee, on an annual basis, may recognize those projects that have demonstrated a high level of commitment to maintaining or restoring the integrity of a designated historic resource.

b. Stationery. The City of Elk Grove shall, on an annual basis, supply owners of qualified historic resources in the City of Elk Grove with a limited supply of stationery indicating their property is a designated historic resource that contributes to the historic character of the City of Elk Grove.

c. Plaque. The City shall furnish owners of qualified historic resources in the City of Elk Grove a small plaque engraved with the name of the resource, its date of construction, and its placement on the applicable historic resource list(s), provided the owner(s) agree to mount this plaque on their property such that it is visible from the public right-of-way to the fullest extent possible yet does not damage the integrity of the historic resource.

B. Applications Meeting the Secretary of the Interior's Standards. The following preservation incentives shall be made available to applications involving contributing

resources listed on the National Register of Historic Places, contributing resources listed on the California Register of Historical Resources, or which are designated Elk Grove landmarks where the proposal does not result in substantial adverse change to the historic resources and where proposed changes are consistent with “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings” or “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes”:

1. Waiver of Historic Preservation Committee fees.

2. A fifty (50%) percent reduction in parking requirements for commercial uses in historic resources with limited off-street parking.

C. Applications for Noncontributing Resources. The following preservation incentive shall be made available to applications involving only noncontributing resources listed on the National Register of Historic Places, noncontributing resources listed on the California Register of Historical Resources, or noncontributing resources designated Elk Grove landmarks where the proposal does not result in substantial adverse change to the contributing resources associated with this property: waiver of Historic Preservation Committee fees.

D. Additional Incentives. The Historic Preservation Committee may recommend additional historic preservation incentives to the City Council, to be adopted and incorporated into this chapter by resolution of the City Council.

#### **7.00.110 Unsafe or dangerous conditions.**

None of the provisions of this chapter shall prevent any measures of construction, alteration, or demolition necessary to correct the unsafe or dangerous conditions of any historic resource where such condition has been declared unsafe or dangerous by the Building Official, the Fire Chief or other appropriate public official or body, and where the proposed measures have been declared necessary by such official or body to correct the said condition; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition and as is done with due regard for preservation of the appearance of the structure involved may be performed pursuant to this section. In the event any structure or other feature shall be damaged by fire, earthquake or other natural disaster, to such an extent that in the opinion of the aforesaid officials or body it cannot be reasonably repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws. If the condition of an unsafe or dangerous historic resource so permits, the official(s) in charge of correcting such a condition shall consult with the Historic Preservation Committee before carrying out corrective measures.

**7.00.120 Duty to keep in good repair.**

The owner, lessees and any other person in actual charge or possession of a historic resource shall take steps necessary to prevent:

- A. The substantial deterioration or decay of any exterior portion of such a resource or improvement; and
- B. The substantial deterioration or decay of any interior portions thereof whose maintenance is necessary to preserve any exterior portion.

**7.00.130 Showing of extreme hardship.**

If the applicant presents evidence clearly demonstrating to the satisfaction of the approving authority that failure to approve the application for a minor improvement permit, certificate of appropriateness, or a demolition/relocation certificate will cause an extreme hardship because of conditions peculiar to the particular structure or other feature involved, the approving authority may approve or conditionally approve such application even though it does not meet the stipulated standards of review for the particular application type. The applicant shall bear the burden of proving the extreme hardship and shall provide substantiation of the claim as the approving authority may require. The Historic Preservation Committee and/or approving authority is authorized to request that the applicant furnish additional information, documentation and expert testimony, the cost of which shall be paid by the applicant, to be considered by the approving authority in its related findings. All additional required information shall be provided by a qualified individual or firm selected by the City. In determining whether extreme hardship exists, the approving authority shall consider evidence that demonstrates:

- A. Denial of the application will deprive the applicant of all reasonable economic value in his or her property;
- B. Sale or rental of the property is impractical, when compared to the cost of holding such property for uses permitted in the zoning district;
- C. Utilization of the property for lawful purposes is prohibited or impractical; or
- D. Rental at a reasonable rate of return is not feasible.

### **7.00.140 Enforcement.**

It shall be unlawful for any property owner to permit or maintain violations of any of the provisions of this chapter by allowing the alteration, relocation, or demolition of a historic resource they own without first obtaining the required approval as provided in this chapter. Any violations of this chapter shall be a nuisance and may be subject to appropriate corrective action by the Community Enhancement Division or the City Attorney's Office.

A. Property owners violating this chapter shall be subject to the following:

1. All penalties as set forth in the City of Elk Grove fee schedule or other applicable law;
2. No further applications for land use entitlements (to include ministerial decisions such as building permits) shall be processed for the lot in question until any violation determination is corrected (i.e., to return the property to its previous state prior to the violation under the oversight of the Historic Preservation Committee). For purposes of this subsection, the City of Elk Grove's Planning Director or his or her designee shall be authorized to make a determination that there exists a violation of this chapter subject to an appeal to the City Council, as provided herein. This determination shall be made in writing and notice of the determination with a copy of the determination shall be served in the manner described in subsection (A)(2)(b) of this section.
  - a. Any determination made by the Planning Director regarding whether or not there exists a violation may be appealed in writing to the City Council within ten (10) days of service of the notice of the Planning Director's determination. The City Council's written determination shall be final and conclusive on the date it is issued. The determination shall be served in the manner set forth in subsection (A)(2)(b) of this section. The decision shall include notification that any action to judicially review said determination must be commenced not later than ninety (90) days following the date of the decision and order of abatement, pursuant to Section 1094.6 of the California Code of Civil Procedure.
  - b. Any notice pursuant to this subsection shall be delivered by certified U.S. Mail, postage prepaid and return receipt requested; U.S. Mail delivery confirmation; U.S. Mail signature confirmation; or such other delivery method that is reasonably calculated to provide actual notice to the property owner. The names and addresses of owners appearing on the assessment roll shall be conclusively deemed to be the proper persons and addresses for the purpose of mailing such notices. Service is deemed complete at the time of the deposit of the document in the U.S. Mail;
3. The City Attorney may seek injunctive relief or maintain an action in abatement to further the provisions of this chapter, including, but not limited to, an injunction requiring



that violators be required to reasonably restore the historic resource to its appearance or condition prior to the violation, under the guidance of the Historic Preservation Committee;

4. Any historic resource in the City of Elk Grove which is the subject of an outstanding order to abate a substandard condition pursuant to the City Building Code is hereby declared to be a nuisance which can be treated as an infraction or a misdemeanor. With respect to any such historic resource, any person aggrieved by such a nuisance may bring an independent civil action against the owner of the designated property for all appropriate relief, including damages, costs and attorney's fees. A "person aggrieved" is any person whose quiet use or enjoyment of or ability to rent or successfully conduct lawful activities at another property is interfered with by the substandard or other condition giving rise to a nuisance at the historic resource. Every day of such interference is a separate and distinct nuisance.

**7.00.150 Fees.**

The City Council shall set and amend by resolution all fees required to implement this chapter.

**7.00.160 Accessibility.**

The City of Elk Grove is committed to achieving full compliance with the Americans with Disabilities Act. The City of Elk Grove operates its programs so that, when viewed in their entirety, they are readily accessible to or usable by individuals with disabilities. The City of Elk Grove fully supports the use of the State Historical Building Code for qualified historic resources to ensure all individuals have access to historic buildings.

**TITLE 8**

**ANIMALS**

**Chapters:**

**8.01 General Provisions**

**8.02 Custody, Care, and Control of Animals**

**8.03 Animal Licensing**

**8.04 Rabies Control**

**8.05 Animal Impoundment, Disposition, and Adoption**

## **8.06 Dangerous and Vicious Animals**

### **Chapter 8.01**

#### **GENERAL PROVISIONS**

Sections:

- 8.01.010 Purpose.
- 8.01.020 Definitions.
- 8.01.030 Compliance with zoning requirements.
- 8.01.040 Applicability of State laws.
- 8.01.050 Animal Services Officer – Position created.
- 8.01.060 Enforcement.
- 8.01.070 Authority.
- 8.01.080 Entering on private property.
- 8.01.090 Warrants unnecessary.
- 8.01.100 Authority to arrest and to issue notices to appear.
- 8.01.110 Obstructing officers unlawful.
- 8.01.120 Use of equipment to impound and firearms authorized.
- 8.01.130 Liability of City.
- 8.01.140 Animal service fees.
- 8.01.150 Mutual aid authority.
- 8.01.160 Returning animals to known owners.
- 8.01.170 Removing animal from custody of Animal Services Officer or holding shelter without permission prohibited.
- 8.01.180 Violations

### **8.01.010 Purpose.**

- A. The purpose of this chapter is to establish standards for the keeping of livestock and animals in a manner which will not endanger the health, peace, and safety of the citizens of the City and which will assure that the livestock, animals, fowl, and reptiles are kept in a clean and sanitary condition and not subject to suffering, cruelty, or abuse.
- B. Supplemental to State law, this title shall in all respect be construed to supplement and harmonize with the provisions pertaining to animal industry.

### **8.01.020 Definitions**

For the purposes of EGMC Title 8, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter, unless the context clearly indicates or requires a different meaning.

#### A. "A" definitions:

1. "Adequate water" means that a constant access to a supply of clean, fresh, potable water is provided in a sanitary manner or is provided at regular intervals for the species; never, however, to exceed twenty-four (24) hours at any interval.
2. "Ambient temperature" means that temperature immediately surrounding the animal.
3. "Animal" includes birds, cats, dogs, fishes, fowl, rabbits, reptiles, and nonhuman mammals and bovine and the like.
4. "Animal Services Officer" means the Animal Services Officer or any other person authorized to enforce the provisions of this title.
5. "Animal shelter" means the Sacramento Society for the Prevention of Cruelty to Animals (SSPCA) shelter or any other facility designated by action of the City Council of the City of Elk Grove for the purpose of impounding and caring for all animals found in violation of this chapter, or surrendered to the City by their owners, and shall be a facility devoted to the welfare, protection, and humane treatment of all animals.
6. "Apiary" is a place where bees are kept; especially: a collection of hives or colonies of bees kept for their honey. A commercial apiary would consist of three (3) or more hives or colonies measuring twelve inches by twelve inches by fourteen inches (12"x12"x14") with the average hive containing approximately twenty-five thousand (25,000) bees.
7. "At large" shall mean:

a. General. The presence of any animal when it is off the premises of its owner and not restrained by a leash or tether under the control of a person physically capable of retaining control of the animal, or when the animal is on the premises of its owner and not restrained by a leash, tether, fence, or other adequate enclosure sufficient to prevent ingress and egress of the animal or not under the control and/or the immediate presence of its owner;

b. For the purposes of this provision, “at large” shall mean outside a house, vehicle, or other enclosure adequate to prevent male dogs gaining access to the female dog.

B. “B” definitions:

1. “Bees” are a monophyletic lineage within the superfamily Apoidea, presently classified by the unranked taxon name Anthophila.

2. “Beekeeping” (or apiculture, from Latin apis, bee) is the maintenance of honey bee colonies, commonly in hives, by humans. A beekeeper (or apiarist) keeps bees in order to collect honey and beeswax, for the purpose of pollinating crops, or to produce bees for sale to other beekeepers. A location where bees are kept is called an apiary.

3. “Butcher” means bleeding, eviscerating, skinning, splitting, cutting, or carving the body or any portion of the body of an animal.

C. “C” definitions:

1. “Cat” means any member of the feline species (Felis Catus) customarily confined or cultivated by man as a pet.

2. “Coop” means a covered enclosure for the shelter of fowl.

D. “D” definitions:

1. “Dog” means any member of the canine species (Canis Familiaris) customarily confined or cultivated by man as a pet, but excludes other members of the family Canidae.

2. “Domestic animal” includes dogs, cats, and birds, as well as horses, donkeys, mules, burros, cattle, sheep, goats, swine, rabbits, and fowl commonly kept or raised as farm or livestock animals.

3. “Domestic bird” includes budgies, canaries, cardinals, cockatiels, cockatoos, finches, lorries, lorikeets, lovebirds, macaws, parakeets, parrots, sparrows, toucans, and weavers.

E. "E" definitions:

1. "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that involves anesthesia, produced by an agent which causes the painless loss of consciousness and death during such loss of consciousness by injection.
2. "Exotic" means any animal not normally kept as a domestic or household pet, fowl, livestock, and the like, including lions, tigers, and monkeys.

F. "F" definitions:

1. "Fowl" means any larger domestic bird such as a domesticated chicken, duck, goose, guinea fowl, peafowl, peacock, turkey, dove, pigeon, game bird, or similar bird intended for human consumption or for the production of eggs for human consumption.

G. Reserved for future use.

H. "H" definitions:

1. "Harbored" means the feeding or sheltering of an animal for three (3) consecutive days or more.
2. "Horse" means an animal of the genus Equus, including horses, mules, donkeys, and burros.
3. "Household pets" means domestic animals ordinarily permitted in a place of residence, kept for company and pleasure, such as dogs, cats, domestic birds, guinea pigs, white rats, rabbits, mice, and other similar animals generally considered by the public to be kept as pets, excluding fowl. For one (1) family residences, a combination of dogs or cats is not to exceed the maximum of four (4) total, two (2) rabbits maximum, domestic birds and other similar animals are permitted, where the total number of animals in one (1) place of residence shall not exceed ten (10).
4. "Hobby Hive(s)" means the recreational keeping of bees in beehives when the number of hives is fewer than three (3).

I. Reserved for future use.

J. Reserved for future use.

K. Reserved for future use.

L. "L" definitions:

1. "Livestock" means an animal kept for use on a farm and includes any swine, sheep, goat, horse, cattle, equine, or bovine animal.
2. "Lot" means a single parcel of land for which a legal description is filed of record or the boundaries of which are shown on a subdivision map or record of survey filed in the office of the Sacramento County Clerk-Recorder.

M. Reserved for future use.

N. Reserved for future use.

O. "O" definitions:

1. "Owner" means a person who owns, possesses, harbors, or controls an animal. In the case of a minor, the parents or guardians of the minor shall be deemed the owner. All adults residing at the same property address shall be rebuttably presumed to be the owner of any animal owned, possessed, harbored, or controlled on the property.
2. "Ownership" means any person, keeping, harboring, controlling, having custody of, or possessing one or more animals for a period of not less than seventy-two (72) hours.

P. "P" definitions:

1. "Person" means any individual, domestic or foreign corporation, partnership, association of any kind, trust, fraternal society, or cooperative.
2. "Pet" means any animal kept for pleasure rather than utility.
3. "Physical control" means any animal confined or restrained by a leash, chain, rope, or lead by a person of size and responsibility to adequately keep control of the animal or within the real property limits of its owner.
4. "Premises" means any lot or parcel of land owned, leased, or rented by a person.
5. "Public nuisance" means any animal which either:
  - a. Molests passersby or passing vehicles;
  - b. Attacks other animals or humans;
  - c. Trespasses on school or park grounds;
  - d. Is repeatedly at large, not under the custody, control, or possession of the owner, or not properly confined on the owner's property;

e. Damages public property;

f. Disrupts the peace by continuously and incessantly barking, howling, crying, yelping, baying, or making any other noise at any time during the day or night to the disturbance of any other person. Continuous and incessant is defined as frequent barking, howling, crying, yelping, baying, or any other noise of ten (10) minutes or more duration within a thirty (30) minute period, provided that at the time of the complaint no person or persons were trespassing or threatening to trespass upon the private property of the owner or the animal was not being teased or provoked in any manner;

g. Is allowed to run at large while in the stage of heat;

h. Is allowed to defecate or urinate on public property or on private property without the consent of the owner.

Q. "Q" definitions:

1. "Quarantine" means the isolation of any animal within a substantial enclosure to avoid its contact with other animals or unauthorized persons.

R. Reserved for future use.

S. "S" definitions:

1. "Sanitize" means to make physically clean and remove and destroy to a practical minimum agents injurious to health.

2. "Stall" means a covered enclosure or shelter, barn, stable, or other outbuilding for the shelter of livestock.

T. Reserved for future use.

U. Reserved for future use.

V. "V" definitions:

1. "Vaccination" means a protective inoculation against rabies with an anti-rabies vaccine recognized and approved by the Sacramento County Health Department.

2. "Veterinary hospital" means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

3. "Vicious animal" is any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being, in a place where such person is conducting himself or herself peacefully and lawfully;
  - a. An animal which has been trained to fight or which is owned or harbored for this purpose;
  - b. Any animal previously determined to be and currently listed as a dangerous animal which, after its owner or keeper has been notified of this determination, continues the behavior described in EGMC Sections 8.06.040 or 8.06.050, or is maintained in violation of EGMC Section 8.06.070(C), (1) through (6).

W. "W" definitions:

1. "Wild animal" shall mean any of the following:
  - a. Any animal described in California Fish and Game Code Sections 2116 and 2118;
  - b. Any animal described in any addition to Fish and Game Code Section 2118, by regulation of the Fish and Game Commission as provided in Section 2118 (j and k);
  - c. The following members of the Class Reptilia:
    - i. Order Ophidia (including racers, boas, water snakes, and pythons) over eight (8' 0") feet in length,
    - ii. Order Loricata (including alligators, caymans, and crocodiles) over three(3' 0") feet in length,
    - iii. Order Sauria (excepting iguanas) over three (3' 0") feet in length;
  - d. The following members of the Class Aves (birds):
    - i. Order Falconiformes (including hawks, eagles, and vultures),
    - ii. Subdivision Ratitae (including ostriches, rheas, cassowaries, and emus);
  - e. The following members of the Class Mammalia:
    - i. Order Carnivora, expressly excepting the domestic dog (*Canis Familiaris*) and the domestic cat (*Felis Catus*), but including the family Felidae (such as ocelots, margays, tigers, jaguars, leopards, and cougars) and the family Canidae (such as wolves, dingos, coyotes, and jackals),
    - ii. Order Marsupialia (such as kangaroos and opossums),



- iii. Order Chiroptera (bats),
  - iv. Order Edentata (such as sloths, anteaters, and armadillos),
  - v. Order Proboscidea (elephants),
  - vi. Order Primata (including monkeys, chimpanzees, and gorillas),
  - vii. Order Ungulata (including antelope, deer, and bison),
  - viii. Genus llama, Genus camelus;
- f. Any nondomestic species when kept, maintained, or harbored in such numbers or in such a manner as to constitute the likelihood of danger to the animals themselves, to human beings, or to the property of human beings;
- g. Any hybrid animal which is genetically twenty (20%) percent or more part wild animal and eighty (80%) percent or less domestic animal and is capable of transmitting rabies, except livestock hybrids, and for which no rabies prophylaxis is recognized or authorized by the State.
- h. A dangerous animal over which the owner has evidenced a failure to maintain control.
- X. Reserved for future use.
- Y. Reserved for future use.
- Z. Reserved for future use.

#### **8.01.030 Compliance with zoning requirements.**

Notwithstanding any other provisions of this title, it is unlawful for any person to keep or maintain or cause to be kept or maintained any animal, unless the keeping of such is permitted in the particular district as provided in the Zoning Code.

#### **8.01.040 Applicability of State laws.**

Notwithstanding the provisions of this title, the provision of the Health and Safety Code, the Penal Code, and the Administrative Code of the State relating to animal health, control and care, and rabies control shall apply when such provisions are more stringent than the provisions of this title.

#### **8.01.050 Animal Services Officer – Position created.**

The positions of Animal Services Officer shall be created and shall be under the direction of the City Manager or a designee. The Animal Services Officer is designated

as the person responsible for the impounding of animals within the City. Nothing in this title shall prevent the City from undertaking any or all of the duties of the public shelter and or any animal control services as defined herein.

**8.01.060 Enforcement.**

The Animal Services Officer and designees and the City Manager or designee are empowered, and it shall be their duty, to enforce the provisions of this title.

**8.01.070 Authority.**

Subject to the provisions of California Code of Civil Procedure, Section 1822.50 et seq., the Animal Services Officer or any person whose duty it is to enforce the provisions of this title may at any reasonable time enter upon any premises for the purpose of inspection upon reasonable cause to believe there is a violation of any provision of this title or any law of the State relating to the care, treatment, control or prevention of cruelty to animals.

**8.01.080 Entering on private property.**

The enforcing authority shall have the right, and is hereby authorized and empowered, to enter upon private property for the purpose of enforcing the provisions of this title or for other purposes consistent therewith. The enforcing authority shall be given prompt access upon oral notification to the responsible person and upon exhibiting suitable evidence of his or her identity and authority; provided, however, except in an emergency, a warrant issued pursuant to Part 3 of Title 13 of the Code of Civil Procedure of the State (Sections 1822.50 through 1822.57 inclusive), or its subsequent counterparts, shall first be secured when entry or access thereto is denied. Refusal to admit such members when a warrant is not required shall be a misdemeanor. Neither the Animal Services Officer nor the City shall be liable for any damage from any reasonable entry.

**8.01.090 Warrants unnecessary.**

Any Animal Services officer may enter upon private property without a warrant for the following purposes:

- A. When he or she has the express permission of the owner or occupant of the premises;
- B. When he or she has probable cause to believe that any rabid, injured, sick, abandoned, or uncared for animal is present;
- C. When in pursuit of any animal:

1. When such animal is unlicensed,
  2. Where such animal has been running at large upon any highway or road or other public property,
  3. When such animal has been trespassing on private property, and the owner or occupant of such property has requested that such animal be apprehended;
- D. When he or she has probable cause to believe that there exists in any building or upon any premises or property any condition which may be in violation of this title.

**8.01.100 Authority to arrest and to issue notices to appear.**

Pursuant to the provisions of California Penal Code Sections 836.5 and 830.9, any Animal Services Officer or other person ordered by the City Council of the City of Elk Grove shall have the power and duty pursuant to this title to investigate complaints of violations of any provisions of this title, and may arrest a person without a warrant whenever he or she has reasonable cause to believe that the person to be arrested has committed an infraction or a misdemeanor in his or her presence, which is a violation of this title, and may issue a citation to such person to appear in court to answer to such charges.

**8.01.110 Obstructing officers unlawful.**

It is unlawful and shall be a misdemeanor for any person to willfully resist, delay, or obstruct any Animal Services Officer in the discharge or attempt to discharge any duty of his or her office.

**8.01.120 Use of equipment to impound and firearms authorized.**

In performance of his or her duties, the Animal Services Officer shall have the authority to employ the use of a tranquilizer gun, taser, firearms, pepper spray, direct stop spray and any animal control equipment or device in common use within the State, necessary to take up and impound an animal.

**8.01.130 Liability of City.**

No liability shall be incurred by the City for the disposition of any animal made pursuant to the provisions of this title.

**8.01.140 Animal service fees.**

Fees will be charged for animal services and shall be established from time to time by resolution of the City Council.

**8.01.150 Mutual aid authority.**

The Animal Services Officer, upon receiving a request for assistance from another Animal Services Officer, another animal control department, peace officer or public official, or having requested assistance from another animal control department, shall be empowered to enforce all State, City, County or municipal codes and/or chapters which are related to his or her field of enforcement in that jurisdiction.

#### **8.01.160 Returning animals to known owners.**

When any animal is seized, and its ownership is known to the Animal Services Officer, such animal need not be impounded, but the Officer, at his or her discretion, may return it to its owners and cite the owner of the animal to appear in court to answer to charges of violations of the provisions of this title.

#### **8.01.170 Removing animal from custody of Animal Services Officer or holding shelter without permission prohibited.**

No person shall remove any animals from the custody of the Animal Services Officer or from a City holding shelter or vehicle without permission from the Animal Services Officer. Violation of this provision constitutes a misdemeanor.

#### **8.01.180 Violation**

Violations of this Title shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 8.02**

### **CUSTODY, CARE, AND CONTROL OF ANIMALS**

#### **Sections:**

- 8.02.010 Animal care.
- 8.02.020 Animals not to be abused.
- 8.02.030 Keeping wild, exotic, and dangerous animals and reptiles.
- 8.02.040 Snakes.
- 8.02.050 Limitation on number of dogs and cats.
- 8.02.060 Running at large prohibited.
- 8.02.070 Impoundment of dogs running at large.

- 8.02.080 Control or containment.
- 8.02.090 Female dogs in heat.
- 8.02.100 Confinement of puppies.
- 8.02.110 Dogs and other animals in vehicles.
- 8.02.120 Dogs prohibited in food establishments.
- 8.02.130 Killing or butchering within residential areas prohibited.
- 8.02.140 Poisoning animals prohibited.
- 8.02.150 Staking animals.
- 8.02.160 Cage and pen requirements.
- 8.02.170 Sanitary enclosures.
- 8.02.180 Animals designated as public nuisances prohibited – Abatement procedures.
- 8.02.190 Sale of animals for experimentation.
- 8.02.200 Sales or gifts of animals.
- 8.02.210 Animals not to be given away as prizes.
- 8.02.220 Care of bees and beehives

**8.02.010 Animal care.**

A. No owner shall fail to provide his or her animals with adequate feed and water, proper, clean, and sanitary shelter, protection from the weather and veterinary care when needed to prevent suffering. The humane care and treatment of all animals shall be maintained at all times.

B. Every person who keeps an animal confined in an enclosed area shall provide it with an adequate exercise area. If the animal is restricted by a leash, rope or chain, the tether shall be affixed in such a manner that it will prevent the animal from becoming entangled or injured and permit the animal's access to adequate shelter, food and water. Violation of this provision constitutes a misdemeanor.

**8.02.020 Animals not to be abused.**

No person shall beat, cruelly ill-treat, torment, tease, overload, overwork, or otherwise abuse an animal, nor cause, instigate, or permit any dogfight, cockfight, or combat between animals or animals and humans, excluding police canines, within the City, nor shall any parent allow or permit his or her minor child to so treat any animal. Violation of this provision constitutes a misdemeanor.

**8.02.030 Keeping wild, exotic, and dangerous animals and reptiles.**

No person shall have, keep, or maintain any wild, exotic, dangerous, nondomestic animal or reptile within the City.

**8.02.040 Snakes.**

A. It shall be unlawful for any person to own any snake within City limits, unless specifically allowed by the State Department of Fish and Game. Any such permit required by the Department of Fish and Game for the keeping of any snake must be obtained by the owner and shown to the Animal Services Officer upon demand.

B. It shall be unlawful for any person to own and keep within the City any snake that is more than eight (8' 0") feet in length.

**8.02.050 Limitation on number of dogs and cats.**

It is unlawful for any person to keep or harbor more than four (4) dogs or four (4) cats or a combination of both not to exceed a total of four (4), which are over the age of four (4) months on or in any lot, premises, dwelling, building, structure, boat, or living accommodation.

**8.02.060 Running at large prohibited.**

No person owning any dog or cat, or having the care, custody, control, or possession of any dog or cat shall suffer, allow, or permit such dog or cat to run, be, or remain at large on any public street, road, alley, park, square, school, or other public place or upon any private property other than the property of the owner or custodian of such dog or cat without the consent of the owner of such property, within the corporate limits of the City; and all dogs may be deemed running at large within the meaning of this section unless tied or restrained by chain, strap or cord, not to exceed six (6' 0") feet in length, attached to their collars and actually held by some person, or staked away from the public walkway or thoroughfare. Any such restraining device shall be of sufficient strength as to prevent being broken, severed, or otherwise rendered ineffective by the weight and/or strength of the dog; and every dog or cat found running at large in violation of the provisions of this section shall be immediately seized and impounded.

Upon the second (2<sup>nd</sup>) impoundment for running at large the animal shall be required to be spayed/neutered. The cost will be paid for by the owner of the animal. For purposes of this section, any dog or cat in or upon any vehicle shall be deemed to be on the premises of the operator thereof.

**8.02.070 Impoundment of dogs running at large.**

The Animal Services Officer may seize and impound every dog found running at large or nuisance animals found to be in violation of this title. Those animals seized will be impounded at the animal shelter and confined there in a humane manner.

**8.02.080 Control or containment.**

No person owning or having care, custody, control, or possession of any dog shall allow the dog to remain outside of a secure building or dwelling on the premises of the person unless the dog is within a fenced enclosure which is adequate to contain the dog, or unless the dog is securely tethered (for no longer than two (2) hours within a twenty-four (24) hour period) so as to prevent the dog from leaving the premises at will. Any dog so tethered shall be secured in such a manner as to be unable to cross the property line of such premises and shall further be restrained from entering onto any sidewalk, street, road or other such place designated for the use of the public.

**8.02.090 Female dogs in heat.**

It is unlawful for any person to permit any female dog which is owned, harbored, or controlled by him or her, to run at large or to run loose on or within the premises of such person, at any time during the period when the dog is in heat or breeding condition. "Running loose" is defined for the purposes of this section as being outside of a house, closed garage, or other closed building, whether tied or not.

**8.02.100 Confinement of puppies.**

All dogs under four (4) months of age shall be confined to the premises of, or kept under physical restraint by the owner, keeper, or harborer.

**8.02.110 Dogs and other animals in vehicles.**

A. A dog or any other animal in or upon a vehicle is deemed to be upon the property of the operator of such vehicle. No dog, except a dog assisting a peace officer engaged in law enforcement duties, or any other animal shall be transported on any public thoroughfare in any vehicle unless such dog or animal is totally enclosed within such vehicle, within a secured container carried upon such vehicle, or securely cross-tethered to such vehicle in such a way as to prevent a falling out of or off such vehicle, and to prevent injury to the animal.

B. No dog or any other animal shall be left completely enclosed in a parked vehicle without adequate ventilation, or in such a way as to subject the animal to temperatures sufficiently above ambient to affect the animal's health and welfare. The Animal Services Officer may impound any animal found in violation of this section for the safety and protection of the animal and the public. In the event any animal is so confined, authority is given to the Animal Services Officer, or any other enforcing authority, to enter such vehicle by whatever reasonable force is necessary to release the animal without any liability upon the City or the enforcing authority for resulting damages. Violation of this provision constitutes a misdemeanor.

**8.02.120 Dogs prohibited in food establishments.**

No person shall allow, permit or take any dog (except service assistant dogs or dogs used by law enforcement officers) whether loose, on leash or in arms, into any restaurant, grocery store, farmers market, meat market, fruit store or food establishment of any kind in the City, except for service assistant dogs, which may be lawfully taken into any food establishment of the City unless prohibited by the management thereof.

**8.02.130 Killing or butchering within residential areas prohibited.**

No person shall kill or butcher any animal on any property with a residential zoning designation.

**8.02.140 Poisoning animals prohibited.**

No person shall place, leave, or expose, in any place accessible to any animals, with the intent to kill or harm such animals, any poisonous substance or ingredient, or any edible or any other substance or ingredient which has in any manner been treated or prepared with any poisonous substance or ingredient. Violation of this provision constitutes a misdemeanor.

**8.02.150 Staking animals.**

No person shall tie, hitch, or stake a horse, cow, sheep, hog, or any other animal upon, in, or along any public highway in this City so that the animal can go upon or across the used or traveled part of the highway or any portion of the used or traveled part of the highway. The animal cannot provide for a public nuisance or be a threat or danger to public safety.

**8.02.160 Cage and pen requirements.**

No person shall keep or maintain any live animal in a cage, coop, hutch, pen, yard or space which is less than three (x3) times as large in floor space and twice (x2) the height as the total size of all live animals which may be kept therein, and which is not of



sufficient height to permit each animal to stand in a natural erect position. This shall not preclude a veterinarian, any person(s) engaged in showing animals, or animal groomer from temporarily confining an animal in a smaller container for medical, showing or grooming purposes. Violation of this provision constitutes a misdemeanor.

**8.02.170 Sanitary enclosures.**

A. Every person keeping any animal shall at all times keep cages, coops, runs, pasture, or other enclosures wherein such animal is kept in a clean and sanitary condition, and shall remove excreta and manure there from every day, or as often as is necessary so as not to become a nuisance to any person in the neighborhood.

B. No person shall at any time maintain any lot or other premises, or any portion thereof, in the City, upon which any animal is kept in an unsanitary condition. No person shall maintain any such lot or other premises, or portion thereof, upon which any animal is kept, in such condition as to cause the same to be infested with flies or insects or to create any noxious or offensive odors.

**8.02.180 Animals designated as public nuisances prohibited – Abatement procedures.**

A. Public nuisance prohibited. It is unlawful for any person to keep, have upon premises owned, occupied, or controlled by him or her within the City, any animal found to be a public nuisance as defined by this title.

B. Public nuisance abatement.

1. Whenever Animal Services or any of its Animal Services Officers has reasonable cause to believe that a public nuisance, as defined in this section, exists, the Animal Services Officer may conduct an investigation of such alleged nuisance.

2. If, upon such investigation, the Animal Services Officer determines that a nuisance does not exist, no further action shall be taken. If the complaining party wishes to pursue the matter, he or she may seek a civil claim.

3. a. If, upon such investigation, the Animal Services Officer determines that a nuisance exists, he or she shall issue an order to the owner of the offending animal directing that such nuisance be abated. In the event that the owner does not comply with the order, the Animal Services Officer may immediately issue a citation to the owner of the offending animal to appear in court.

b. In lieu of a citation by a witnessing peace officer, a complaint may be issued to the owner of person in custody of the animal causing the disturbance upon the request of any two (2) unrelated persons, living in different households, who are disturbed by

the nuisance of the animal and in violation of Subsection a above. Said request shall be accompanied by declarations setting forth sufficient information to indicate that a violation of EGMC Section 8.01.020(f) has occurred in the presence of said persons.

c. Violation. Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits, or allows a public nuisance to exist thereon, after reasonable notice in writing from an Animal Services Officer, District Attorney, City Attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, is guilty of a misdemeanor, and shall be punished accordingly; and the existence of such nuisance of each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is made the duty of the Animal Services Officer, or the City Attorney to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated.

#### **8.02.190 Sale of animals for experimentation.**

Neither the Animal Services Officer nor anyone in his or her employ shall knowingly sell or give any impounded animal to any person, firm, corporation, association, or school for the purpose of animal experimentation. Violation of this provision constitutes a misdemeanor.

#### **8.02.200 Sales or gifts of animals.**

No person under the age of eighteen (18) shall place any dog, cat, puppy or kitten on public display for the purpose of sale, offer for sale, barter or give-away upon any street, sidewalk, parking lot, shopping center walkway or other public place, and no transfer of any such animal shall be made to any person under the age of eighteen (18).

#### **8.02.210 Animals not to be given away as prizes.**

No person shall give away any live animal, fish, reptile or bird as a prize for or as an inducement to enter any contest, game or competition, or as an inducement to enter a place of amusement, or offer such vertebrate as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.

#### **8.02.220 Care of bees and beehives**

Any person who keeps beehives on their property must comply with zoning requirements set forth in the Zoning Code. All properties on which beehives are kept must provide for adequate water sources on the property.

## **Chapter 8.03**

### **ANIMAL LICENSING**

#### **Sections:**

- 8.03.010 License required – Fees.
- 8.03.020 Application for license.
- 8.03.030 Tagging a dog not described in application.
- 8.03.040 Collar and tag.
- 8.03.050 Duplicate tags.
- 8.03.060 Exemption.
- 8.03.070 Violation – Penalty.

#### **8.03.010 License required – Fees.**

- A. Every person owning, possessing, keeping, harboring or having custody of any dog or cat over four (4) months old shall obtain a license for each dog or cat and appropriate license fees shall be paid annually. Fees and charges shall be established from time to time by resolution of the City Council. Licenses shall be obtained within thirty (30) days after the day upon which the dog or cat is four (4) months old, or within thirty (30) days after acquisition of the dog or cat, or within thirty (30) days of moving into the City.
- B. Failure to register and pay the required fee within the term prescribed shall cause such fee to become delinquent and penalties shall be added to the regular fee and collected by the City at the time of such delinquent registration.
- C. Upon presentation of a certificate from a licensed veterinarian that the dog or cat has been spayed or neutered or that the dog or cat cannot be spayed or neutered for medical reasons, the registration fee shall be equivalent to at least one half (0.5) that of the required fee.
- D. The license fee may be prepaid for a one (1) year or a three (3) year period; provided that the applicant presents a valid rabies vaccination certificate extending beyond the remaining period of validity of the license for which the applicant desires.

E. Exemptions:

1. Government. Dogs owned and used by the City, municipal corporations, or other public agencies shall be licensed without fee.
2. Senior citizens. One (1) cat or dog kept in a household where the owner of the cat or dog is over the age of sixty-five (65) shall be licensed without fee.

**8.03.020 Application for license.**

Application for dog or cat licenses shall be made in writing to the City and shall include the following for each animal: the name and address of owner; address where the dog or cat is kept; name, breed, age, sex, color, and description of the animal; and current rabies vaccination certificate issued by a licensed veterinarian.

**8.03.030 Tagging a dog not described in application.**

It is unlawful for any person to attach a license tag to the collar of any dog except the dog that is described in the application for such license tag.

**8.03.040 Collar and tag.**

A. It is unlawful for any person to own, harbor, or keep any dog over the age of four (4) months, unless such person has provided the dog with a suitable collar or other device to which the license shall be securely attached. The dog shall wear the collar and tag at all times that the dog is in the City and not confined indoors or in an enclosed yard or pen.

B. The owner or person in control of the dog shall show the license receipt and tag at any time upon demand by the Animal Services Officer or his or her designee. Refusal to show proper registration upon demand is unlawful.

**8.03.050 Duplicate tags.**

Lost license tags may be replaced by surrendering to the City the receipt for the lost license and by paying to the City a fee. This fee shall be established from time to time by resolution of the City Council. After complying with the above provision, the City shall again register the dog, and issue a new license tag. The City shall attach the surrendered receipt to a copy of the new receipt to substantiate the fee collected and verify the transaction.

**8.03.060 Exemption.**

Any dog used by State, County, City, or city and county law enforcement agencies shall not be subject to the provisions of EGMC Sections 8.03.010 through 8.03.050, or any

other section not contained in this chapter, if any such dog is being used in the performance of any law enforcement activity.

**8.03.070 Violation – Penalty.**

Violation of any provision of EGMC Sections 8.03.010 through 8.03.040, inclusive, shall constitute an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 8.04**

**RABIES CONTROL**

**Sections:**

- 8.04.010 Restrictions on keeping of animals capable of transmitting rabies.
- 8.04.020 Rabies reports.
- 8.04.030 Vaccination required.
- 8.04.040 Vaccination – Exemption.
- 8.04.050 Certificate of vaccination.
- 8.04.060 Quarantine and impoundment.
- 8.04.070 Animal bite – Victim report.
- 8.04.080 Animal bite – Medical report.
- 8.04.090 Notification of quarantine restrictions.
- 8.04.100 Quarantined animal at large.
- 8.04.110 Killing of animals suspected of having rabies.
- 8.04.120 Quarantine of guide dog serving blind master.
- 8.04.130 Quarantine of dog used by law enforcement agency.

**8.04.010 Restrictions on keeping of animals capable of transmitting rabies.**

It shall be unlawful for any person to own, keep, harbor, or possess within the City limits any animal capable of transmitting the rabies virus unless such animal can be property

immunized with a rabies vaccine approved by the California Department of Public Health.

#### **8.04.020 Rabies reports.**

A. Rabies is declared to be a reportable disease. Every veterinarian practicing in this City and every person providing professional medical treatment for animal bites by an animal of a species subject to rabies shall immediately notify Animal Services within the proper jurisdiction, whenever rabies is suspected.

B. Every veterinarian, practicing within this City or having vaccinated any animal residing within City limits, shall provide Animal Services with a copy of every rabies immunization certificate which he or she issues for all animals immunized within the jurisdiction of such department.

#### **8.04.030 Vaccination required.**

A. No person shall keep, harbor, or maintain any cat/dog over the age of four (4) months within the City limits unless such dog has been vaccinated by a licensed veterinarian with a canine rabies vaccine approved by and in the manner prescribed by the California Department of Public Health.

B. Every cat/dog shall have a medically current vaccination with an anti-rabies vaccine approved by the California Department of Public Health. A veterinarian shall administer the vaccination or as provided through County-recognized clinics, and a certificate of vaccination shall be issued to the owner. The certificate of rabies vaccination which accompanies the license application shall be valid if in compliance with the following immunization schedule:

1. Primary immunization. Primary immunization shall be defined as the initial inoculation of an approved rabies vaccine administered to young cats/dogs between the ages of four (4) to twelve (12) months.

2. Revaccination Intervals. The interval for revaccination of cats/dogs administered primary immunization between the ages of four (4) to twelve (12) months will be twelve (12) months. The interval for primary or revaccination of cats/dogs administered rabies vaccines over the age of twelve (12) months shall be at least once every three (3) years.

#### **8.04.040 Vaccination – Exemption.**

No cat/dog need be vaccinated for rabies where a licensed veterinarian has certified that the vaccination would endanger the cat/dog's health and the local health officer endorses on the certificate his or her approval. The certificate must bear the date of

issuance and must be renewed each year. Any cat/dog subject to this exemption shall not be allowed off the premises of the owner.

#### **8.04.050 Certificate of vaccination.**

A. A license shall not be issued for any dog that has attained the age of four (4) months or over unless a valid certificate of rabies vaccination is presented with the license fee. The certificate of vaccination must show all items required by State law, including the following:

1. The name, address, and telephone number of the dog's owner;
2. The description of the dog, including breed, color, age, name, and sex;
3. The date of immunization;
4. The type of rabies vaccine administered;
5. The name of the manufacturer;
6. The lot number of the vaccine used.

B. Such certificates shall bear the signature of the veterinarian administering the vaccine or a signature authorized by him or her, and in addition such certificate shall be stamped, printed, or typed with his or her name, address, and telephone number for legibility.

#### **8.04.060 Quarantine and impoundment.**

All animals in violation of the Rabies Control Act (California Health and Safety Code Section 121575 et seq.), or of the rabies control provisions of this chapter, shall be quarantined or impounded and shall be subject to destruction in some humane manner or to other disposition as provided by this chapter.

#### **8.04.070 Animal bite – Victim report.**

Any person or parent or guardian of such person, or an owner of an animal, bitten or scratched by an animal of a species subject to rabies shall immediately report such incident to the Animal Services Officer or Animal Services division.

#### **8.04.080 Animal bite – Medical report.**

Every veterinarian and every person providing professional medical treatment for animal bites by an animal of a species subject to rabies shall immediately notify Animal Services whenever rabies is suspected

#### **8.04.090 Notification of quarantine restrictions.**

A. The Animal Services Officer shall issue a written notice to the owner of or to any person harboring an animal within the City to quarantine such animal for a period of eleven (11) days, or for such period as required by state law, when the Animal Services Officer has received information that such animal has bitten or otherwise exposed any person or other animal. The animal shall not be released from such quarantine except by written permission from the Animal Services Officer.

B. Upon demand made by the Animal Services Officer, the owner shall forthwith surrender any animal which has bitten a human or other animal, or which is suspected of having been exposed to rabies, for supervised quarantine at the animal shelter, the costs of which shall be borne by the owner. The animal may be reclaimed by the owner if adjudged free of rabies and upon the payment of board fees as determined by resolution of the City Council and upon compliance with the licensing provisions. No impoundment fee shall be incurred under such circumstances. At the discretion of the Animal Services Officer, such quarantine may be on the premises of the owner. For stray animals whose ownership is not known, such quarantine shall be at the animal shelter.

#### **8.04.100 Quarantined animal at large.**

It shall be unlawful for any person to allow any animal to run at large or fail to keep the animal quarantined after being so notified.

#### **8.04.110 Killing of animals suspected of having rabies.**

No person shall kill, or cause to be killed, any rabid animal, any animal suspected of having been exposed to rabies, or any animal biting a human, unless in self-defense or the defense of others, nor remove such animal from the City without written permission from Animal Services.

#### **8.04.120 Quarantine of guide dog serving blind master.**

Notwithstanding any other provision of this subchapter, a guide dog serving a blind master shall not be quarantined in the absence of evidence that he or she has been exposed to rabies unless his or her owner fails:

- A. To keep the dog safely confined to the premises of the owner;
- B. To keep the dog available for examination at all reasonable times.



#### **8.04.130 Quarantine of dog used by law enforcement agency.**

Notwithstanding any other provision of this chapter, a dog used by any State, County, City or city and county law enforcement agency shall not be quarantined after biting any person if such bite occurred while the dog was being used for any law enforcement purpose. The law enforcement agency shall make the dog available for examination at any reasonable time. The law enforcement agency shall notify Animal Services within its jurisdiction if the dog exhibits any abnormal behavior.

### **Chapter 8.05**

#### **ANIMAL IMPOUNDMENT, DISPOSITION, AND ADOPTION**

##### **Sections:**

- 8.05.010 Impounding of animals.
- 8.05.020 Impoundment of dogs.
- 8.05.030 Impoundment of cats.
- 8.05.040 Redemption of impounded animals.
- 8.05.050 Duration of impoundment.
- 8.05.060 Disposition authorized.
- 8.05.070 Abandonment.
- 8.05.080 Voluntary surrender – Fees.
- 8.05.090 Adoption.
- 8.05.100 Sterilization.
- 8.05.110 Voluntary owner releases of dead animal to Animal Services Officers – Fee.
- 8.05.120 Disposal of carcasses by owners.
- 8.05.130 Diseased or injured animals.

**8.05.010 Impounding of animals.**

The Animal Services Officer shall seize and impound any animal found on or off any premises in violation of any portion of this title and he or she shall have a lien upon such animal sufficient to secure payment of all expenses incurred by reason of his or her seizing, keeping, and caring for such animal. Collection of any and all sums due under this chapter shall be accomplished as determined by the City Council for the collection of any debt owed to the City.

**8.05.020 Impoundment of dogs.**

It is made the duty of the Animal Services Officer to take up and impound all dogs found or kept in the City in violation of any of the sections of this chapter, including, but not limited to, the permit and annual registration sections.

**8.05.030 Impoundment of cats.**

It is made the duty of Animal Services to impound all cats delivered to the animal shelter facility.

**8.05.040 Redemption of impounded animals.**

A. Except where redemption is not permitted by this title, redemption of an impounded animal by the owner shall be made by exhibiting to Animal Services or animal shelter personnel proof of the owner's identity and any required license certificate or license tag or other satisfactory proof of ownership with proof of the owner's identity. No such animal shall be released until redemption fees, costs of care and feeding, veterinary fees incurred if any, and any fees and penalties provided by this title have been paid. Redemption fees shall be established from time to time by resolution of the City Council. No dog or cat shall be released from impoundment until such dog or cat has been licensed or registered as provided by this chapter.

B. In addition to any other fees or fines imposed by this title or State law, the owner of a nonspayed or unneutered dog or cat shall be subject to an "unaltered impounded animal fee." The unaltered impounded animal fee shall be set by resolution of the City Council. For the purpose of this section, "impounded" shall mean any animal that is impounded in violation of EGMC Section 8.05.020 or 8.05.030.

1. Fees collected pursuant to this subsection shall be held to ensure the spaying or neutering of the dog or cat. This fee shall be refundable if written proof of spaying or neutering of the animal is presented to the City within thirty (30) business days of the date of redemption. Refunds shall not exceed the actual fee collected and/or the actual cost charged by a licensed veterinarian to surgically alter the animal, whichever is less.

2. If written, proof of spaying or neutering is not presented to the City within thirty (30) business days of the date of redemption, the fee shall be forfeited to the City. All unaltered impounded animal fees forfeited or unclaimed under this section shall be retained by the City and used only for the following purposes:

a. A program to spay or neuter dogs and cats;

b. A public education program to reduce and prevent overpopulation of dogs and cats, and the related costs to the City;

c. A follow-up program to ensure that dogs and cats transferred by the City to any other public animal control agency or shelter, society for the prevention of cruelty to animal shelter, humane society shelter, or rescue group are spayed or neutered;

d. Any additional costs incurred by Animal Services in the administration of this section.

4. The City may extend the date by which spaying or neutering is to be completed at its discretion for good cause shown, including, but not limited to, a written determination by a veterinarian licensed to practice veterinary medicine in this state that a dog or cat is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the dog or cat to be spayed or neutered. Any extension shall be in writing and shall be temporary, until the dog or cat is healthy enough to be spayed or neutered as certified by a veterinarian licensed to practice veterinary medicine in this state. The dog or cat shall be spayed or neutered within fourteen (14) business days of that certification. The owner shall obtain written proof of spaying or neutering from the veterinarian performing the operation. If the owner presents proof of spaying or neutering to the city within thirty (30) business days of the expiration of the temporary extension, the owner shall receive a refund of the unaltered impounded animal fee pursuant to subsection (B)(1) of this section.

C. A citation pursuant to Food and Agriculture Code Section 30804.7 (dogs) or 31751.7 (cats) may be issued in lieu of payment of the foregoing fee.

D. Any Animal Services Officer, at his or her discretion, may refuse to permit the redemption of any animal impounded pursuant to the provisions of this title, or any other county, state or municipal law, until in his or her opinion the need for the retention of such animal no longer exists. Circumstances could be, but are not limited to, the area in which the animal is to be housed, the need to properly secure the animal on the owner's property, and providing proper veterinarian care. The cost of such continued retention, after any request of redemption and tendering of and costs and fees by the owner, shall be borne by the City. This provision shall not apply to animals impounded during or pursuant to an investigation regarding the designation of the animal as potentially dangerous or vicious, or regarding the owner's care of the animal.

#### **8.05.050 Duration of impoundment.**

A. Licensed/Tagged dog or cat. All impounded dogs or cats found wearing a current license tag or bearing an identification tag or tattoo shall, unless sooner redeemed, be kept in the animal shelter for a period of not less than four (4) days after notification.

B. Unlicensed/Tagged dog or cat. All impounded dogs or cats found not wearing a current license or identification tag shall, unless sooner redeemed or adopted, be kept in the animal shelter for the period of time required by State law.

C. Livestock. Any impounded livestock, such as bovine animals, horses, mules, or burros, shall be kept in the animal shelter for at least five (5) days, unless it is redeemed within that period. If the animal is a bovine animal and is not redeemed, it shall be turned over to the State Bureau of Livestock Identification for disposition by that office. Any other livestock shall be disposed of in accordance with the provisions of the Food and Agriculture Code of the State, Sections 17063 through 17095.

D. Other animals. Any other impounded animal not listed above shall, unless sooner redeemed or adopted, be kept in the animal shelter for the period of time required by State law, as may be amended from time to time, and no less than six (6) business days.

#### **8.05.060 Disposition authorized.**

Except as otherwise provided in this title, an impounded animal which is not redeemed within the specified holding period shall be considered to be abandoned by its owner and shall become the property of the City. Such animal may be adopted or humanely destroyed.

#### **8.05.070 Abandonment.**

The refusal or failure of the owner of any such animal to pay the fees and charges, after due notification, shall constitute his or her abandonment of the animal. Any animal not claimed by its owner within the period specified in this title shall become the property of the City and shall be placed for adoption in a suitable home or humanely destroyed. Abandonment does not relieve the owner's obligation to pay all fees related to the impounding and keeping of the animal.

#### **8.05.080 Voluntary surrender – Fees.**

A. Upon request, an owner may surrender his or her animal to the Animal Services Officer for placement for adoption. Any animal which is voluntarily surrendered to or deposited with the animal shelter or the Animal Services Officer by the owner shall immediately thereafter become the property of the City. It shall be understood that no

guarantee of placement will be made, and humane disposal will be at the discretion of the Animal Services Officer.

B. Any owner of an animal who voluntarily surrenders an animal to the Animal Services Officer shall be subject to a fee for each animal over the age of four (4) months. Litters of unweaned animals or animals less than four (4) months of age shall be considered as one (1) animal.

C. The surrender of an animal by an owner to the animal shelter, subsequent to impoundment for a violation of this title or any provisions of State law, shall not relieve the owner of the obligation to pay such charges as set forth in this section, prior to such surrender, plus accumulated boarding charges, veterinary charges or any other charges related to the impounding and keeping of the animal.

#### **8.05.090 Adoption.**

Animals subject to disposition by the City may be sold if the animal shelter finds that the sale of any such animal is not contrary to law, to policy of the City, or to the public interest. Dogs or cats may not be sold for purposes other than keeping of pets, and may not be sold without first having been licensed when required, neutered or spayed, or a fee therefore having been deposited.

#### **8.05.100 Sterilization**

A. No unclaimed dog or cat shall be released for adoption without being sterilized or without a written agreement from the adopter guaranteeing that such animal will be sterilized and a sterilization deposit made. The sterilization fee deposit shall be established from time to time by resolution of the City Council.

B. In the event such animal is not sterilized within one (1) year after the date of purchase, the sterilization deposit collected at the time of adoption will be considered abandoned and the money applied to the general Animal Services fund and shall be used only for the following purposes:

1. A public education program to prevent overpopulation of dogs and cats;
2. A program to spay or neuter dogs and cats;
3. A follow-up program to assure that animals sold or given away by the shelter are spayed or neutered;
4. Any additional costs incurred under this section.

C. It shall constitute a misdemeanor to fail to sterilize any dog or cat adopted from the animal shelter and the unsterilized animal shall be impounded.

**8.05.110 Voluntary owner releases of dead animal to Animal Services Officers – Fee.**

Any owner of a dead animal who voluntarily releases such animal to the Animal Services Officer, or any dead animal taken into custody by the Animal Services Officer, whose ownership can be determined, shall be subject to a disposal fee. The amount of the disposal fee is set by resolution of the City Council.

**8.05.120 Disposal of carcasses by owners.**

Any person possessing a dead animal shall take the responsibility of disposing of it in a safe and sanitary manner. Upon the receipt of information that the body of an animal has not been properly disposed of in accordance with this section, the Animal Services Officer shall dispose of the body.

**8.05.130 Diseased or injured animals.**

A. Notwithstanding any provisions of this title, an impounded animal, which is determined by a veterinarian to constitute a health or safety hazard, shall be destroyed or otherwise disposed of without delay by the Animal Services Officer or the veterinarian.

B. An impounded animal which is determined by a licensed veterinarian to be suffering extreme pain due to disease or injury, and where there is no reasonable probability that the animal will recover from its disease or injury, may be destroyed without delay by the Animal Services Officer or veterinarian.

C. The Animal Services Officer or any police or sheriff's department may, with the approval of his or her immediate supervisor, humanely destroy within the corporate limits without transporting to shelter or veterinarian any animal too severely injured to move or where a veterinarian is not available or it would be more humane to dispose of the animal.

**CHAPTER 8.06**

**DANGEROUS AND VICIOUS ANIMALS**

**Sections:**

8.06.010 Purpose.

8.06.020 Definitions.

8.06.030 Investigation, confinement, seizures and impoundment.

- 8.06.040 Dangerous animals.
- 8.06.050 Vicious animals.
- 8.06.060 Destruction of vicious animal.
- 8.06.070 Determination of potentially dangerous or vicious animal – Hearing.
- 8.06.080 Time limit to meet requirements.
- 8.06.090 Dogs to be kept under control at all times.
- 8.06.100 Impoundment authorized.
- 8.06.110 Compliance required – Violation.
- 8.06.120 Exception.
- 8.06.130 Restriction on future ownership.
- 8.06.140 Removal of designation.
- 8.06.150 Permit for dangerous animal required

**8.06.010 Purpose.**

This chapter is intended to reduce the risk of attacks or bites by dogs and other animals.

**8.06.020 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. The following circumstances shall be deemed to be “mitigations.” Mitigation shall be a factor in consideration of whether an animal is potentially dangerous, dangerous, or vicious but will be weighed with other circumstances in the making of that determination, including, but not limited to, circumstances such as the nature of the trespass, the age of the trespasser, and the training of the animal in the use of deadly force. Mitigation shall not be considered if the animal has been trained to attack in a manner which will violate any other provision of law.

B. A person is “peaceably and lawfully upon the private property of an owner or possessor of the animal” when he or she is on such property in the performance of any duty imposed upon him or her by the laws of this State or any city or county, or by the

laws or postal regulations of the United States, or when he or she is on such property upon invitation, expressed or implied.

C. "Proper enclosure of a dangerous animal" means that a dangerous animal shall be securely and humanely confined on the owner's property:

1. Within a fence line or structure suitable to prevent the entry of young children, and which is suitable to confine a dangerous animal in conjunction with other measures which shall be taken by the owner or keeper of the animal, such as keeping the animal held securely on a chain. The enclosure shall be designed in order to prevent the animal from escaping; or

2. In an enclosed and locked (with a key or combination lock) pen or structure, suitable to prevent the animal from escaping or the entry of unauthorized persons. The pen or structure shall have secure sides and a secure top which protects the animal from the elements. All sides must be embedded into the ground no less than two (2' 0") feet unless the bottom is adequately secured to the sides. The structure must be kept in a clean and sanitary condition and provide adequate light and ventilation. The enclosure shall not be less than five (5' 0") feet by ten (10' 0") feet, and not less than six (6' 0") feet high.

D. "Severe injury" means any physical injury to a human being or other animal that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

E. "When unprovoked" means that the person who has suffered the injury has not caused nor been a party to any act of teasing, tormenting, abusing, or assaulting the animal, which act of teasing, tormenting, abusing, or assaulting resulted in the animal inflicted injury on that person.

#### **8.06.030 Investigation, confinement, seizures and impoundment.**

A. Whenever an animal suspected of being dangerous or vicious is reported, the Animal Services Officer shall investigate the circumstances and if he or she finds that the animal shows a propensity to attack, bite, scratch, or harass people or other animals without provocation, or displays any other such behavior, he or she shall notify the owner in writing, stating all the facts and circumstances. The Animal Services Officer may order that the animal be kept within a substantial enclosure, securely leashed or otherwise controlled.

B. If the Animal Services Officer has probable cause to believe a dog may be designated as "dangerous" or "vicious" under this title, the owner is unwilling or unable to properly contain and/or control the animal immediately, and the animal poses an



immediate threat to the safety of persons or domestic animals, the animal can be seized, pending the outcome of hearing or appeal; or during the period of time the owner requires to comply with any requirements imposed hereunder, the animal shall be kept at the animal shelter facility at the owner's expense.

C. The animal's owner shall be charged for all costs incurred or fees applicable with respect to such impoundment unless a finding is made that the animal is not potentially dangerous or vicious, or not subject to destruction. An animal held under the provisions of this section shall not be released until the owner pays all charges as specified in EGMC Sections 8.05.010 through 8.05.040. If the owner refuses to pay such charges, the animal shall be treated as unredeemed by the owner, and disposed of pursuant to EGMC Section 8.05.070. Disposal of the animal does not release the owner from his or her responsibility to pay the keeping charges.

**8.06.040 Dangerous animals.**

A. Any animal, except a dog assisting a peace officer engaged in law enforcement duties, which demonstrates any of the following behavior, is rebuttably presumed dangerous:

1. Any animal that chases or approaches any person or domestic animal, anywhere other than on the property of the owner or custodian, in a menacing fashion or apparent attitude of attack, including, but not limited to, behavior such as growling or snarling;
2. Any animal which, when unprovoked, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper of the animal;
3. Any animal which, when unprovoked, bites a person causing a less severe injury than as defined in EGMC Section 8.06.020(d);
4. Any animal which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking any other animal off the property of the owner or keeper of the animal.

B. The Animal Services Officer may issue a notice designating an animal exhibiting the aforementioned characteristics as dangerous and may recommend that the animal's owner take certain actions to prevent future injury by the animal, notwithstanding exceptions as provided for in Section 31626 of the Food and Agriculture code. Such designation shall be subject to a hearing as provided for in EGMC Section 8.06.070.

**8.06.050 Vicious animals.**

Any animal, except a dog assisting a peace officer engaged in law enforcement duties, which demonstrates any of the following behavior, is rebuttably presumed vicious:

- A. Any animal which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being, in a place where such person is conducting himself or herself peacefully and lawfully;
- B. An animal which has been trained to fight or which is owned or harbored for this purpose;
- C. Any animal previously determined to be and currently listed as a dangerous animal which, after its owner or keeper has been notified of this determination, continues the behavior described in EGMC Sections 8.06.040 or 8.06.050, or is maintained in violation of EGMC Section 8.06.110.

**8.06.060 Destruction of vicious animal.**

After the notice and hearing provided for in EGMC Section 8.06.070, Animal Services may further find, in writing with supporting reasons, that an animal is so vicious, or that other special circumstances exist, such that maintaining the animal poses a substantial threat to public health and safety. Ten (10) days after mailing notice of a finding under this section, Animal Services may dispose of any vicious animal by humanely destroying it by injection.

**8.06.070 Determination of potentially dangerous or vicious animal – Hearing.**

A. An animal which exhibits any behavior described in EGMC Sections 8.06.040 to 8.06.050, inclusive, may be determined to be a dangerous or vicious animal. The status shall be established after a hearing as hereinafter provided. Proceedings may be instituted by:

- 1. Observation by the Animal Services Officer;
- 2. A complaint sworn by a person or persons who observed the behavior complained of.

B. Hearings for classification as “dangerous” or “vicious” shall be conducted as follows:

- 1. The owner shall be given written notice, by first-class mail with return receipt requested, or personal service, of the facts which are the bases of the complaint and notice of a hearing. The owner shall be notified of the restrictions which will apply to the animal if it is classified as a dangerous or vicious animal.

2. The owner may waive his or her right to a hearing by filing a written waiver with Animal Services, whereupon Animal Services shall make the findings and apply the sanctions provided in this title.
3. Any hearing shall be set not less than five (5) business days nor more than ten (10) business days after the notice was mailed to the owner by first-class return receipt mail or the owner was personally served, unless the animal has been seized, in which case the hearing must be conducted not later than ten (10) business days after the seizure.
4. If the owner fails to appear at the hearing, the hearing shall nevertheless proceed, and an appropriate order shall be issued.
5. The hearing shall be conducted before a hearing officer. The appointment of the hearing officer shall be by the City Attorney. Any person designated to serve as a 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. The City Attorney shall promulgate rules and procedures as are necessary to establish a list of qualified persons who are capable of acting on behalf of the City of Elk Grove as hearing officers and for the disqualification of hearing officers.
6. The hearing officer may continue hearings, based on good cause, as established by one (1) of the parties to the hearing or if the hearing officer independently determines that due process has not been adequately afforded.
7. The hearing officer shall consider all relevant evidence presented at the hearing. The formal rules of evidence shall not apply. The hearing officer shall also consider circumstances of mitigation, as well as the owner's and animal's history. If the hearing is held as a result of a sworn complaint, at least one (1) of the complainants shall appear and testify at the hearing or the complaint shall be dismissed.
8. After the hearing, the owner or keeper of the animal shall be notified in writing of the determination and orders issued, either personally or by first-class return receipt mail. The hearing officer shall make a written determination within fifteen (15) days after the hearing is concluded, unless the animal has been seized, in which case the determination shall be made in seven (7) days. The decision of the hearing officer shall be final. The complainant, if any, shall be provided with a copy of the determination of the hearing officer.
9. Within five (5) days of the receipt of the notice of determination, either the City or the owner or keeper of the animal may appeal the decision of the hearing officer to the superior court having jurisdiction over the matter. The party appealing the determination shall serve personally or by first-class return receipt mail, notice of the appeal on the other party. Any such appeal shall be by trial *de novo*.

10. The determination of the court hearing the appeal shall be final and conclusive upon all parties.

C. If an animal is determined to be vicious, the animal shall be immediately removed from corporate limits of the City. If an animal is designated "dangerous," the following sanctions shall be applied:

1. The owner of such animal shall immediately keep such animal in a run which is totally enclosed or held securely on a chain, or kept under other adequate control as approved by the Animal Services Officer. If any of these means of restraint is impossible or impracticable, such animal shall be impounded in the animal shelter facility at the owner's expense, until such time as the owner of such animal shall provide for the restraint of the animal in a run which is totally enclosed and approved by the Animal Services Officer.

2. A dangerous animal shall be securely confined in an enclosure as described in EGMC Section 8.06.020(c)(1)(2) or in the dwelling while on the owner's or custodian's property. The owner shall conspicuously display signs with a symbol warning of the presence of a dangerous animal.

3. While off the owner's premises, a dangerous animal shall at all times be restrained by a substantial chain or leash not exceeding six (6') feet in length, held by and under the control of a responsible adult.

4. All dangerous animals shall be properly licensed micro-chipped and vaccinated. In addition, the City shall license the animal as a "Dangerous/Vicious Animal" and place the information in the licensing records of such animal, and the owner shall pay a thirty-six (36) month dangerous/vicious animal licensing fee. The fee shall be established from time to time by resolution of the City Council.

5. A dangerous dog shall be spayed or neutered, at the owner's expense, within thirty (30) days of a dangerous animal determination.

6. Inspections. The Animal Services Supervisor and/or designee is authorized to make whatever inspections he or she deems necessary to ensure compliance with these provisions.

7. Failure to maintain any animal found to be dangerous consistent with the provision of this section shall constitute a misdemeanor, punishable as set forth in EGMC Section 8.06.110.

**8.06.080 Time limit to meet requirements.**

All requirements for owners of dangerous animals must be satisfied within thirty (30) days, unless otherwise specified, of the issuance of the permit. Satisfactory proof of compliance must be provided to Animal Services. If all requirements for owners of dangerous animals are not satisfied within thirty (30) days of the permit issuance, or the owner is unable or unwilling to implement them, the animal shall be humanely euthanized either by the Animal Services Officer or by a licensed veterinarian. Proof of euthanasia shall be provided to the Animal Services Officer within three (3) days of its occurrence.

**8.06.090 Dogs to be kept under control at all times.**

Even if the owner is in compliance with the regulations for keeping such a dangerous animal, if such animal attacks, bites, causes injury, or otherwise threatens the safety of a human being or domestic animal, then such animal shall be immediately impounded at the animal shelter and be subject to destruction.

**8.06.100 Impoundment authorized.**

If upon receiving written notification the owner fails to restrain or control a dangerous animal, as ordered, the owner is in violation of this title and the Animal Services Officer is empowered to seize and impound or destroy the animal.

**8.06.110 Compliance required – Violation.**

Failure of any owner to comply with the provisions of this chapter relating to the keeping, harboring, owning, possessing, or controlling of any dangerous or vicious animals, shall constitute a misdemeanor.

**8.06.120 Exception.**

Nothing in this chapter shall limit the right of any person or officer to take any proceedings against a dangerous or vicious animal or the owner thereof otherwise permitted or provided by State law.

**8.06.130 Restriction on future ownership.**

A. Any person who owns, possesses, keeps or harbors an animal determined to be dangerous or vicious pursuant to this title may, after opportunity for hearing and a finding of good cause by the Animal Services Officer, be subject to restrictions on the ownership of other animals of the species for a period of five (5) years after the original determination of dangerous.

B. At least fifteen (15) days prior to imposition of restrictions, the animal services officer shall mail or otherwise deliver to the person on whom restrictions are proposed a notice containing a statement of the reasons supporting the imposition of restrictions and specifying the proposed restrictions and notice of the person's right to request, in writing within five (5) days of receipt of the notice, a hearing before the hearing officer as to the existence of good cause for imposition of restrictions. If a hearing is requested, the city shall mail or otherwise deliver to the requesting party notice of the time and place of the hearing. If, after the hearing, the hearing officer determines that good cause for restrictions exists, he or she shall impose the specific restrictions within ten (10) days after mailing notice of the decision. If no hearing is requested, the animal control officer shall impose restrictions within fifteen (15) days of the original notice.

#### **8.06.140 Removal of designation.**

A. If there are no additional instances of the behavior described in EGMC Sections 8.06.040 or 8.06.050 within a thirty-six (36) month period from the date of designation as a dangerous animal, the animal shall be removed from the list of dangerous animals.

B. The owner of a dangerous animal shall notify Animal Services immediately if said animal is loose, unconfined, has attacked another animal or human being, or has died or if moved to a new location within the corporate limits of the City of Elk Grove for purposes of re-inspection of the animals enclosure.

C. A dangerous animal shall not be sold, bartered, given away, or placed in a new home without prior notification of and approval by Animal Services. Any new owner must comply with the requirements of this section. If the animal in question dies, or is sold, transferred, or permanently removed from the city where the owner or keeper resides, the owner of the dangerous animal shall notify Animal Services of the changed condition and new location of the animal in writing within two (2) business days.

#### **8.06.150 Permit for dangerous animal required**

Upon receipt of a permit application to keep a dangerous animal, the animal services officer may investigate the application and after permit fees have been paid, may grant a City permit if in his or her discretion, he or she finds the following conditions are satisfied:

A. All aspects of EGMC Section 8.06.080 (1) through (6) have been met;

B. The animal will not create any detriment or danger to the peace, health, or safety of the people in the vicinity of the location the animal will be kept;

C. Possession and maintenance of the animal at the location has not resulted in and is not likely to result in an animal being subjected to neglect, suffering, cruelty, or abuse;

D. The location where the animal is possessed or maintained is kept clean and sanitary, and the animal is provided with proper and adequate food, water, ventilation, housing, and care at all times;

E. Neither the applicant, owners, nor the possessor of the animal has had a City dangerous animal permit or any other license required under this title revoked, or been convicted of a violation of this title or any law regulating animals within three (3) years;

F. The animal shall not be possessed nor maintained at any other location than that expressed on the permit.

## **TITLE 9**

### **PUBLIC PEACE, MORALS AND SAFETY**

#### **Chapters:**

**9.01 Road Closures and Destruction of Road Barriers and Signs**

**9.02 Destroying Monuments**

**9.03 Impersonating City Police Officers and Employees**

**9.04 False Reports**

**9.05 Youth Curfew**

**9.06 (Reserved)**

**9.07 Sidewalk Recreation**

**9.08 Firearms**

**9.09 Bows and Arrows**

**9.10 Unauthorized Use of Shopping Carts**

**9.11 Human Waste Disposal**

**9.12 Loitering**

**9.13 Prohibition of Picketing Directed at a Residence or Dwelling**

**9.14 Possession of Open Containers Containing Alcoholic Beverages in Any Private Off-Street Parking Facility**

- 9.15 Unauthorized Use of Towers**
- 9.16 Emergency Alarms**
- 9.17 On-Site Security Requirement**
- 9.18 Display of Harmful Matter to Minors**
- 9.19 Emergency Services Organization and Functions**
- 9.20 Protection of Children from Sexual Offenders**
- 9.36 Park Regulations**

## **Chapter 9.01**

### **ROAD CLOSURES AND DESTRUCTION OF ROAD BARRIERS AND SIGNS**

Sections:

- 9.01.010 Closing roads or highways.
- 9.01.020 Erection of barriers and signs.
- 9.01.030 Destruction of barriers and signs.
- 9.01.040 Penalty for violation.

#### **9.01.010 Closing roads or highways.**

The City Manager, or his or her designee, may close or cause to be closed all or a portion of any road or highway under the City of Elk Grove's jurisdiction to permit completion of construction or maintenance work being performed on the road or highway.

#### **9.01.020 Erection of barriers and signs.**

While any such road or highway, or portion thereof, is in the process of construction or maintenance, the City Manager or his or her designee may erect, or cause to be erected, barriers, obstructions, warning lights and other necessary materials thereon, and may post, or cause to be posted, conspicuous notices alerting the public that the road or highway, or portion thereof, is closed and redirecting traffic.



**9.01.030 Destruction of barriers and signs.**

No person shall knowingly break down, remove, injure, deface or destroy any such barriers, obstructions, warning lights or other necessary materials referenced in EGMC Section 9.01.020.

**9.01.040 Penalty for violation.**

Any person who knowingly violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.02**

**DESTROYING MONUMENTS**

Sections:

9.02.010 Destroying monuments a misdemeanor.

9.02.020 Penalty for violation.

**9.02.010 Destroying monuments a misdemeanor.**

Persons within the City of Elk Grove shall not willfully injure, deface, break down, or remove any monument or stake placed, erected or used by City of Elk Grove employees or authorized City of Elk Grove contractors for the purpose of designating any point in the boundary or survey of any road or highway within the jurisdiction of the City of Elk Grove, on or along any such road or highway, or as a part of such road or highway work.

**9.02.020 Penalty for violation.**

A person who knowingly violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.03**

### **IMPERSONATING CITY POLICE OFFICERS AND EMPLOYEES**

Sections:

9.03.010 Impersonating City Police Officers and employees prohibited.

9.03.020 Wearing of uniforms.

9.03.030 Penalty for violation.

#### **9.03.010 Impersonating City Police Officers and employees prohibited.**

Persons within the City of Elk Grove shall not falsely represent themselves to be an Elk Grove Police Officer, City Council Member, officer, employee, agent, consultant or representative of the City of Elk Grove.

#### **9.03.020 Wearing of uniforms.**

Any person who wears a uniform substantially similar to the official uniform of the Elk Grove Police Department except federal, state, county or local officers when so designated as their official uniform, or other persons authorized by the Elk Grove Chief of Police or his or her designee, shall be guilty of a misdemeanor.

A uniform shall be deemed substantially similar to the uniform of the Elk Grove Police Department if it so resembles the official uniform as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the Elk Grove Police Department.

Uniforms consisting of a blue coloration of trousers, shirt and jacket shall be deemed *prima facie* evidence of substantial similarity to the Elk Grove Police Department's uniform.

#### **9.03.030 Penalty for violation.**

Any person who violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.04**

### **FALSE REPORTS**

Sections:

9.04.010 Making false reports prohibited.

9.04.020 Use of false or misleading documents prohibited.

9.04.030 Penalty for violation.

#### **9.04.010 Making false reports prohibited.**

It is unlawful for any person to knowingly falsify or conceal any fact, or make any false or fraudulent statement or misrepresentation in any matter or proceeding within the jurisdiction of any department or agency of the City.

#### **9.04.020 Use of false or misleading documents prohibited.**

It is unlawful for any person to knowingly use any false or misleading writing or document in any matter or proceeding within the jurisdiction of any department or agency of the City.

#### **9.04.030 Penalty for violation.**

Any person who knowingly violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.05**

### **Youth Curfew**

Sections:

9.05.000 Findings.

9.05.010 Definitions.

9.05.020 Prohibition.

9.05.030 Exemptions.

9.05.040 Constitutional rights.

9.05.050 Enforcement procedure.

9.05.060 Parent responsibility.

9.05.070 Penalty for violation.

### **9.05.000 Findings.**

The City Council of the City of Elk Grove makes the following findings:

A. It is the goal of this curfew ordinance to reduce the number of juveniles being victimized, as well as to safeguard the community from juvenile delinquency.

B. Cities throughout the United States such as Dallas, Texas; Phoenix, Arizona; Chicago, Illinois; New Orleans, Louisiana; Denver, Colorado; and North Little Rock, Arkansas have experienced a drop in juvenile delinquency and victimization during curfew hours as a result of adopting curfew ordinances.

C. It is the goal of the Elk Grove Police Department to protect all members of the community.

D. This chapter will strengthen the Elk Grove Police Department's ability to provide public safety.

E. Regardless of age, all members of the Elk Grove community will benefit from this chapter.

### **9.05.010 Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter.

A. "Curfew hours" means between 10:00 p.m. and daylight.

B. "Emergency" means an unforeseen circumstance or circumstances or the resulting situation that calls for immediate action to prevent serious bodily injury, as defined in this section, or loss of life. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

C. "Establishment" means any privately owned place of business to which the public is invited, including but not limited to any place of amusement, entertainment, or recreation.

D. "Guardian" means:

1. A person who, under court order, is the guardian of the person of a minor; or
2. A public or private agency with whom a minor has been placed by a court; or
3. A person who is at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

E. "Minor" means any person under eighteen (18) years of age.

F. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of a minor.

G. "Public place" means:

1. Any out-of-door area to which the public or a substantial group of the public has access, including, but not limited to, streets, highways, sidewalks, alleys, parks, playgrounds, or other public grounds; and
2. The out-of-doors common areas of establishments, including, but not limited to, entryways and parking lots.

H. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any body member or organ.

#### **9.05.020 Prohibition.**

It is unlawful for any minor to be in any public place or establishment within the City during curfew hours, except as provided under EGMC Section 9.05.030.

#### **9.05.030 Exemptions.**

Minors shall not be in violation of this chapter if, at the time the minor is stopped by a Police Officer, the minor is:

- A. Accompanied by the minor's parent or guardian;
- B. On an errand at the direction of the minor's parent or guardian, without detour or stop;
- C. Driving or riding in a motor vehicle or riding on public transportation;
- D. Engaged in a lawful volunteer or paid employment activity, or going to or returning home from a lawful volunteer or paid employment activity, without detour or stop;

E. Acting in response to an emergency;

F. On the sidewalk abutting the minor's residence or abutting the residence which is immediately adjacent to the minor's residence;

G. Attending or going to or returning home, without detour or stop, from a school, religious, cultural, sports, amusement, entertainment, or recreation activity; or any organized rally, demonstration, meeting or similar activity;

H. Waiting at a train or bus station for transportation;

I. Emancipated in accordance with the California Family Code or other applicable state law.

**9.05.040 Constitutional rights.**

Nothing in this chapter shall be interpreted to preclude minors from being in a public place for the purpose of exercising the rights guaranteed by the First Amendment of the United States Constitution and by Article I, Sections 2, 3, and 4 of the California Constitution, including the free exercise of religion, freedom of speech, the right of assembly, and the right to petition.

**9.05.050 Enforcement procedure.**

A. Before taking any enforcement action under EGMC Section 9.05.020, a Police Officer shall ask the apparent offender's age and reason for being in the public place.

B. The officer shall not take enforcement action under this chapter unless the officer has probable cause to believe that neither EGMC Section 9.05.040 nor any exemption under EGMC Section 9.05.030 applies.

**9.05.060 Parent responsibility.**

It is unlawful for parents and guardians to permit or allow minors to violate EGMC Section 9.05.020. Each violation of this section shall constitute a separate offense.

**9.05.070 Penalty for violation.**

Any minor who violates EGMC Section 9.05.020 shall be guilty of a misdemeanor, which shall be enforced pursuant to the provisions of EGMC Chapter 1.04, and shall be dealt with in accordance with juvenile court law and procedure.

Any parent or guardian who violates EGMC Section 9.05.060 shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.07**

### **SIDEWALK RECREATION**

Sections:

9.07.010 Statement of purpose.

9.07.015 Restrictions on public property and private property.

9.07.020 Penalty for violation.

#### **9.07.010 Statement of purpose.**

The City Council of the City of Elk Grove makes the following findings regarding the necessity for the regulation of skateboards, roller skates, in-line skates, roller skis and similar devices:

A. The regulatory provisions of EGMC Section 9.07.015 are necessary to ensure that skateboards, roller skates, in-line skates and similar devices are operated reasonably for the protection of public health, safety, and welfare.

B. The use of public structures and private property for skating, skateboards or similar devices obstructs and interferes with the free and safe use of such property and, in addition, can be dangerous to the user of such devices.

C. Private property owners confirm that the use of skates, skateboards or similar devices causes substantial damage to private property, consequently causing the private property owner to expend substantial time policing his or her property and expending substantial funds to repair the same.

D. Law enforcement and private property owners confirm that skating and the use of skateboards or similar devices causes safety problems for pedestrians on private property. In shopping centers, shopping malls, or other business establishments, citizens, especially the elderly, have expressed concern over the sometimes aggressive and abusive behavior of the users of such devices, and have expressed a reluctance to return to such business establishments because of the presence of the users of such devices.

E. The improper use of skates, skateboards or similar devices, while enjoyable to the user thereof, can, in addition, if improperly used, not only cause damage and injury to property and pedestrians, but can cause injury to the user of such devices as the user thereof dodges cars in parking lots, pedestrians, and damages property.

F. The proliferation of the use of skates, skateboards and similar devices on private and public property is now a popular sport and method of transportation. However, it has caused the above-mentioned public safety concerns. If all users of such devices were courteous and careful, regulatory supervision would be unnecessary. However, many such users cause safety concerns such that regulation is required in order to avoid injury to property, skaters, skateboarders, users of in-line skates and pedestrians.

**9.07.015 Restrictions on public property and private property.**

Persons may ride skateboards, roller skates, in-line skates, or similar devices within the City of Elk Grove, in areas specifically designated for the use of such devices, upon City of Elk Grove property unless signs are posted prohibiting such devices, and upon private property unless the use of such devices has been declared prohibited by the owner or person in lawful possession of the property by the posting of a sign or signs prohibiting such activity. Such signs shall be erected at each entrance to the facility or property where the prohibition shall be in effect and shall clearly state the area or specific location of prohibition.

**9.07.020 Penalty for violation.**

Violation of EGMC Section 9.07.015 shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.08**

**FIREARMS**

Sections:

9.08.010 Firearms defined.

9.08.020 Discharging within City unlawful.

9.08.030 Parent responsibility.

9.08.040 Exceptions.

9.08.050 Target or shooting range.

9.08.060 Hunting permit.

9.08.070 Special shooting permit.

9.08.080 Appeal.



9.08.090 Penalty for violation.

**9.08.010 Firearms defined.**

For the purpose of this chapter, “firearms” includes any shotgun, rifle, pistol, revolver, or air gun, and any other weapon of similar use and design.

**9.08.020 Discharging within City unlawful.**

It is unlawful for any person to use, fire or discharge any firearm within the City except as provided in EGMC Sections 9.08.040, 9.08.050, 9.08.060 and 9.08.070.

**9.08.030 Parent responsibility.**

It is unlawful for any parent, guardian or other adult person having the care and custody of a minor to knowingly permit or allow such minor to violate any of the provisions of this chapter. Any parent, guardian or other adult person having the care and custody of a minor who violates the provisions of this chapter under the circumstances specified in this section shall be guilty of a misdemeanor.

**9.08.040 Exceptions.**

The prohibitions of this chapter do not apply when the use of a firearm is necessary for the protection of life or property or to a peace officer acting in the performance of his or her duties.

**9.08.050 Target or shooting range.**

The prohibitions of this chapter do not apply to the establishment or maintenance of any pistol, rifle, target range or shooting gallery, nor to the discharge at any target thereon, by any person using such range or shooting gallery, of any rifle, shotgun, pistol, revolver, air gun, or bow and arrow in or on such range or shooting gallery; provided, that such range or shooting gallery complies with the Zoning Code and is so installed, constructed, safeguarded, equipped and used as to adequately prevent any bullet, shot, or missile from being projected beyond the confines of such range or shooting gallery.

**9.08.060 Hunting permit.**

Hunting may be permitted on parcels of land for which a hunting permit is obtained from the Chief of Police of the Elk Grove Police Department. The Chief of Police may issue a hunting permit, provided he or she has ascertained that hunting on the subject land will not be dangerous to persons or property. All hunting permits shall be subject to the following conditions, violation of which shall constitute a violation of this chapter:

A. Hunting shall be limited to seasons as established by law;

B. No firearms other than shotguns may be used;

C. Any other conditions which the Chief of Police or his or her designee may impose for the protection of lives and property.

1. Application for a hunting permit shall be made in writing by the owner of the land and shall contain a map showing the location of the land, number of acres and the number of hunters requested to be on the land at any one time.

2. Any hunting permit issued shall state the number of hunters allowed on the land at any one time. The number shall be determined by the Chief of Police or his or her designee.

3. Any person hunting on land for which a hunting permit has been issued pursuant to this chapter shall wear a distinctive emblem furnished by the permittee, who shall furnish the Chief of Police with a description of the emblem.

4. A hunting permit issued pursuant to this chapter may be valid for no longer than one (1) year.

#### **9.08.070 Special shooting permit.**

The Chief of Police or his or her designee may also issue a special shooting permit to any farmer or orchardist whose agricultural property lies within the City to shoot predatory animals or birds which destroy growing crops or fruit, upon such conditions and limitations as the Chief of Police or his or her designee may impose for the protection of lives and property.

#### **9.08.080 Appeal.**

Anyone dissatisfied with the decision of the Chief of Police or his or her designee relative to an application for a hunting permit may file an administrative appeal within ten (10) days after receiving the decision pursuant to EGMC Chapter 1.11.

#### **9.08.090 Penalty for violation.**

Any person who knowingly or recklessly violates EGMC Sections 9.08.020 or 9.08.030 shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.09**

### **BOWS AND ARROWS**

Sections:

9.09.010 Purpose.

9.09.020 Definitions.

9.09.030 Escaping arrows prohibited.

9.09.040 Penalty for violation.

#### **9.09.010 Purpose.**

Arrows shot from bows are inherently dangerous to life and safety. The use of bows and arrows in urbanized areas can be hazardous to neighbors in the absence of adequate precautions to assure that arrows come to rest safely upon the property from which the arrows are shot. The purpose of this chapter is to impose upon persons in control of real property the duty of assuring that arrows do not escape to adjacent property.

#### **9.09.020 Definitions.**

As used in this chapter the following words have the following meanings:

A. "Arrow" means a missile shot from a bow consisting of a straight, slender shaft that has a point or sharp head of stone or metal, feathers or veins fastened near the butt, and a nock to be fitted to a bow string and any other missile of substantially similar design. As used in this chapter, "arrow" includes "quarrel."

B. "Bow" means a device made of a strip of wood, metal, or other flexible material with a cord that connects the two ends so as to hold the strip bent in an arc under tension and used to propel an arrow on the string by nocking the arrow on the string and drawing it back against the tension so that upon release it is propelled through the air. As used in this chapter, "bow" includes "crossbow."

C. "Crossbow" means a device having a short bow mounted crosswise near the end of a stock that resembles the stock of a rifle and that is often provided with a mechanical device by which the string is drawn back and fixed and being usually shot from the shoulder by means of a trigger that releases the string and discharges a quarrel lying in a groove in the stock.

D. "Occupant" means a person who has and exercises the right to use and occupy real property. As used in this chapter, "occupant" means the owner of the property unless another person has the right to use and occupy the property pursuant to an agreement.

E. "Quarrel" means a missile designed to be fired from a crossbow. As used in this chapter, "quarrel" includes, but is not limited to, an arrow.

#### **9.09.030 Escaping arrows prohibited.**

A. It is unlawful for any occupant of real property, the boundaries of which are within four hundred fifty (450' 0") feet of any neighboring building utilized as a residence or as a barn or other outbuilding in connection with residential use, to shoot with a bow from such property an arrow which escapes and lands upon adjacent property.

B. It is unlawful for any occupant of such real property to knowingly permit another person to utilize a bow and arrow upon such property, if the person permitted to utilize the bow and arrow shoots an arrow from such property which escapes and lands upon adjacent property.

#### **9.09.040 Penalty for violation.**

Any person who knowingly or recklessly violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **Chapter 9.10**

#### **UNAUTHORIZED USE OF SHOPPING CARTS**

Sections:

9.10.010 Removal.

9.10.020 Abandonment.

9.10.030 Possession.

9.10.040 Use.

9.10.050 Alteration.

9.10.060 Notice.

9.10.070 Penalty for violation.

#### **9.10.010 Removal.**

No person shall remove any shopping cart, shopping basket or other similar device from the premises or parking area of any business establishment within the City if such shopping cart, basket or device has permanently affixed to it a sign identifying it as belonging to such business establishment.

The provisions of this section shall not apply to removal by the owner or his agent or an employee of the business, nor to removal by a customer of the business possessing the written consent of its owner, manager or authorized agent.

#### **9.10.020 Abandonment.**

No person shall abandon or leave any such shopping cart, shopping basket or other similar device which has been removed from the owner's premises upon any public street, alley, sidewalk, parkway or other public place within the city, nor upon any private property within the City except that of the owner of such cart, basket or device.

#### **9.10.030 Possession.**

No person shall have in his or her possession any shopping cart, shopping basket or other similar device which has been removed from the owner's premises and which has permanently affixed to it a sign identifying it as belonging to a business establishment.

The provisions of this section shall not apply to possession by the owner or his agent or an employee of the business, nor to possession by a customer of the business possessing the written consent of its owner, manager or authorized agent.

#### **9.10.040 Use.**

No person shall use any shopping cart, shopping basket or other similar device for any purpose other than that originally intended by such business without the owner's written consent.

#### **9.10.050 Alteration.**

No person shall alter, convert or tamper with any shopping cart, shopping basket or other similar device or remove any part thereof without the owner's written consent.

#### **9.10.060 Notice.**

Each business establishment owning such shopping cart, shopping basket or other similar device shall place at each of its exits a sign notifying its customers and the general public of the aforesaid prohibitions. Such notification shall be placed in such a position and be of sufficient size and legibility so as to ensure that persons leaving such

places of business shall be fully informed of the prohibitory provisions contained in this chapter.

**9.10.070 Penalty for violation.**

Violation of this chapter shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.11**

**HUMAN WASTE DISPOSAL**

Sections:

9.11.010 Unlawful conduct.

9.11.020 Penalty for violation.

**9.11.010 Unlawful conduct.**

It is unlawful for any person, within the City of Elk Grove, to urinate or defecate in a public place other than a restroom, or in a place open to public view, or upon the private property of another without the owner's consent.

**9.11.020 Penalty for violation.**

Any person who violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.12**

**LOITERING**

Sections:

9.12.010 Definitions.

9.12.020 Prohibited loitering.

9.12.030 Discretion of peace officer.

9.12.040 Application of chapter to minors.

9.12.050 Penalty for violation.

**9.12.010 Definitions.**

As used in this chapter the following definitions shall apply:

A. "Loiter" or "loitering" shall mean remaining idle in essentially one location or moving about aimlessly. It shall also include occupying a parked vehicle or one which is moving extremely slowly.

B. "Property in the proximity of any posted no-cruising zone" shall mean any property which is both visible from and located within three hundred (300' 0") feet of any portion of a street, alley or highway which is posted as a no-cruising zone pursuant to EGMC Chapter 10.66.

**9.12.020 Prohibited loitering.**

No person shall loiter in such a manner as to:

A. Create or cause to be created a danger of a breach of the peace.

B. Create or cause to be created any disturbance or annoyance to the comfort and repose of any person.

C. Obstruct the free passage of pedestrians or vehicles.

D. Remain upon any business premises after its business hours, without the consent of the owner or legal occupant.

E. Remain upon any private property without the consent of the owner or legal occupant.

F. Remain upon any business premises or private property after having been asked to leave by the owner or legal occupant.

G. Remain on any property in the proximity of any posted no-cruising zone between the hours of 6:00 p.m. of one day and 6:00 a.m. of the next day.

**9.12.030 Discretion of peace officer.**

Whenever any peace officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public or private place is causing or is likely to cause any of the conditions enumerated in EGMC Section 9.12.020, he or she may, if he or

she deems it necessary for the preservation of the public peace and safety, cite that person for violation of this chapter.

**9.12.040 Application of chapter to minors.**

Any minor who is cited for violation of EGMC 9.12.020(G) shall be considered in violation of a traffic offense for purposes of Section 256 of the California State Welfare and Institutions Code.

**9.12.050 Penalty for violation.**

A. The first violation of EGMC 9.12.020 shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.B. Any subsequent violation of EGMC 9.12.020, or a refusal to leave the premises after having been cited for a violation of EGMC 9.12.020, shall be a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.13**

**PROHIBITION OF PICKETING DIRECTED AT A RESIDENCE OR DWELLING**

Sections:

9.13.000 Purpose.

9.13.005 Picketing focusing upon a particular residence is prohibited.

9.13.010 Penalty for violation.

**9.13.000 Purpose.**

The City Council of the City of Elk Grove makes the following findings:

A. It is the purpose of this chapter to protect and preserve the home through assurance that the state and federal constitutional right of members of this community to enjoy their homes and dwellings with a feeling of well-being, tranquility, privacy, and lack of coercion is maintained while at the same time preserving the right of citizens of this community to peacefully exercise their free speech rights as granted under the Federal First Amendment and the California Constitution. At times these rights can become competing interests as when, for example, picketing and demonstrating are directed and targeted at a particular residence or dwelling.



B. One important aspect of the right to residential privacy, well-being and tranquility is protection of the unwilling resident listener. Although in many locations citizens are expected to simply avoid speech they do not want to hear in order to protect free speech rights of others, the home is different as it is the citizen's last citadel when he or she is weary or tired of the world's cares. Thus, a special benefit of which all citizens have a right to enjoy within the privacy of their homes is the right to avoid unwanted intrusions and unwanted speech. The preservation and protection of the right to privacy in the home and the enjoyment of tranquility, well-being, and a sense of security in the home is in the public interest and is uniquely and critically important to the public health, safety, and welfare.

C. Picketers and demonstrators who focus upon a particular residence or dwelling generally do not seek to disseminate a message to the general public, but to harass and intrude upon the targeted resident, and to do so in an especially offensive way.

D. Even if some picketers or demonstrators have a broader communicative purpose, their activity and medium of expression when targeted at a particular residence inherently and offensively intrudes on residential privacy. Such unwelcome picketing activity creates a situation where the resident becomes captive within his or her home and the resident and household cannot readily move to another dwelling to avoid the disturbance.

E. Such picketing and demonstrating also obstructs and interferes with the free and safe use of public sidewalks and public ways of travel.

F. Therefore it is incumbent upon the City to restrict this unwelcome picketing activity that is targeted at a particular residence or dwelling by providing the resident and household therein with a boundary of protection from such unwelcome intrusions.

G. Without resort to picketing or demonstrating before or about the residence of an individual, ample alternative channels of communication exist, and will continue to exist, under the terms and provisions of this chapter to ensure the exercise of the right of free speech and assembly under the Federal and State Constitutions. This chapter does not ban general picketing or demonstrating in residential areas.

**9.13.005 Picketing focusing upon a particular residence is prohibited.**

A. It is unlawful for any person to engage in picketing within one hundred (100' 0") feet of a residence or dwelling of any individual within the City when such picketing is focused upon that particular residence or dwelling.

B. The term “picketing” as used in subsection (A) of this section does not require that the individual picketing carry a sign to come within the restrictions of subsection (A) of this section.

C. The term “focused upon” as used in subsection (A) of this section means picketing that is targeted at a residential dwelling and is fixated on that dwelling or proceeds on a definite course or route in front of or anywhere around the perimeter of that particular residence or dwelling.

D. The terms “within one hundred (100’ 0”) feet of a residence or dwelling” as used in subsection (A) of this section shall be measured around the perimeter of the residence or dwelling measured from the outer walls of the structure. An attached garage shall be considered part of the dwelling or residence.

E. Subsection (A) of this section does not prohibit picketing in a residential neighborhood so long as the picketing is not focused upon a particular residence or dwelling. Picketing activity such as, but not limited to, marching, parading, demonstrating, and walking a route in front of an entire block of houses is not prohibited by subsection (A) of this section so long as the picketing is not focused upon a particular residence or dwelling.

F. Subsection (A) of this section shall not apply to a residence which is used as a place of business, or is used for a public meeting, or when picketers are present at the invitation and with the consent of the resident.

G. Nothing within this chapter shall be construed so as to permit entry into private property without the resident’s consent for picketing purposes.

**9.13.010 Penalty for violation.**

Violation of this chapter shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.14**

**POSSESSION OF OPEN CONTAINERS CONTAINING ALCOHOLIC BEVERAGES IN ANY PRIVATE OFF-STREET PARKING FACILITY**

Sections:

9.14.010 Designation of facilities.

9.14.020 Possession of open containers unlawful.

9.14.030 Posting of premises.

9.14.040 Penalty for violation.

**9.14.010 Designation of facilities.**

The City Council may by resolution find and declare that there are privately owned and maintained off-street parking facilities, as described in the resolution, within the City that are generally held open for the use of the public for purposes of vehicular parking to which this chapter shall be applicable.

**9.14.020 Possession of open containers unlawful.**

It shall be unlawful for any person to possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, in any privately owned and maintained off-street parking facility that the City Council has designated as being generally held open for use of the public for purposes of vehicular parking pursuant to EGMC Section 9.14.010.

**9.14.030 Posting of premises.**

Notwithstanding the provisions of EGMC Section 9.14.020, this chapter shall not apply to any off-street parking facility described therein unless the owner or operator has caused to be posted at each entrance to the off-street parking facility clearly visible notices indicating that the provisions of EGMC Section 9.14.020 are applicable to the facility.

**9.14.040 Penalty for violation.**

Violation of this chapter shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 9.15**

**UNAUTHORIZED USE OF TOWERS**

Sections:

9.15.010 Definitions.

9.15.020 Prohibited activity.

9.15.030 Exceptions.

9.15.040 Penalty for violation.

**9.15.010 Definitions.**

The term “tower” or “towers” as used herein refers to any radio, television, broadcasting or receiving towers and similar structures which are located in the City of Elk Grove.

**9.15.020 Prohibited activity.**

A. It shall be unlawful for any person to climb upon any tower in the City of Elk Grove without the express written authorization of the owner of the tower.

B. It shall be unlawful for any person to climb upon any tower in the City of Elk Grove for the purpose of parachuting, jumping, sailing or otherwise floating off the tower.

1. There shall be a rebuttable presumption pursuant to Section 606 of the California Evidence Code that any person or persons who climb a tower with a parachute or other fall-breaking apparatus in their possession are climbing the tower for the purpose of parachuting, jumping, sailing or otherwise floating off the tower as prohibited herein.

C. It shall be unlawful for any person to parachute, jump, sail or otherwise float off any tower in Elk Grove for the purposes of parachuting, jumping, sailing or otherwise floating to the ground.

**9.15.030 Exceptions.**

The provisions of EGMC Section 9.15.040(A) shall not apply to owners of towers or their authorized employees or agents.

**9.15.040 Penalty for violation.**

A. Any person who violates the provisions of EGMC Section 9.15.020(A) shall be guilty of an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

B. Any person who violates the provisions of EGMC Section 9.15.020(B) or (C) shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **Chapter 9.16**

### **EMERGENCY ALARMS**

#### Sections:

- 9.16.010 Purpose and authority.
- 9.16.020 Definitions.
- 9.16.030 Permit required.
- 9.16.040 Alarm application permit and fee.
- 9.16.050 Renewals, reapplications and information changes.
- 9.16.060 False alarms.
- 9.16.070 Responsibility for alarm service – Audible or silent.
- 9.16.080 Suspension of permit.
- 9.16.090 Appeal.
- 9.16.100 Issuance of administrative citations.
- 9.16.110 Audible alarm systems.
- 9.16.120 Automatic calling/dialing systems prohibited.
- 9.16.130 Violation of chapter.

#### **9.16.010 Purpose and authority.**

The City Council finds and determines that the responsible use of alarm systems facilitates the effective and efficient response to alarms by the Elk Grove Police Department and is in the best interests of the people of the City of Elk Grove. A permit is required to operate an alarm system and the fee for the permit covers the estimated reasonable cost of administering this chapter and regulating alarm systems. Reducing the number of false alarms and unnecessary responses by the Elk Grove Police Department is consistent with the public health and safety. This chapter is not intended to interfere with contractual obligations between alarm businesses and alarm users or to supersede any provisions of state law.

### **9.16.020 Definitions.**

For the purpose of this chapter, the following definitions shall apply and are listed below alphabetically:

“Alarm agent” shall mean a person employed by an alarm company operator whose duties include selling on premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm company to perform any of the duties described herein.

“Alarm company operator” shall mean any person who, for any consideration whatsoever, engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service alarm systems or who responds to alarm systems, except for any alarm agent. “Alarm company operator,” however, does not include a business which merely sells from a fixed location or manufactures alarm systems unless the business services, installs, sells on premises, monitors, or responds to alarm systems at the protected premises.

“Alarm system” shall mean any mechanical and/or electrical device designed for the detection of an unauthorized entry on real property premises, or for alerting others of the commission of an unlawful act or both; and when actuated, emits a sound or transmits a signal to indicate that an emergency situation exists, and which may prompt police to respond.

Alarm systems include, but are not limited to, silent alarms, audible alarms, and direct dial telephone devices. The following devices shall not constitute alarm systems within the meaning of this section:

1. Devices which are not installed, operated, or used for the purpose of reporting an emergency to the Police Department;
2. Alarm devices affixed to motor vehicles, trailers or trailer coaches (as defined in Sections 415, 630 and 635 of the California Vehicle Code), vessels, or aircraft;
3. Alarm devices installed on a temporary basis by the Police Department.

“Alarm user” shall mean any person using an alarm system at his or her place of business or residence.

“Audible alarm” shall mean a device designed for the detection of an unauthorized entry on, or an attempted entry into premises or a structure, or for alerting others of the commission of an unlawful act, or both, and which, when activated, generates an audible sound on or off the premises.

“Automatic calling/dialing system” shall mean an alarm system which automatically sends over telephone lines, by direct connect or otherwise, a recorded message indicating an emergency situation exists.

“Central monitoring station” shall mean any office, station, or telephone answering service where person(s) monitor and/or receive emergency signals from alarm systems, and thereafter, relay messages from such signals by live voice to the Elk Grove Police Department Telecommunications Center.

“Direct connect” shall mean an alarm system which has the capability of transmitting system signals to, and receiving them at, an agency maintained by a local government entity such as the City of Elk Grove at its Elk Grove 911 call center.

“False alarm” shall mean the activation of an alarm system through mechanical failure, malfunction, improper installation or maintenance, or the negligence of the owner, lessee, or of his or her employees or agents, which activates response by law enforcement or other emergency response providers when an emergency condition does not exist; provided, however, alarms caused by acts of nature such as earthquakes, floods, tornadoes, or other violent, uncontrollable acts of nature shall not be considered false alarms.

“Interconnect” means to connect an alarm system to a telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

“Nonpriority” shall mean that police response to the activation of an alarm shall not be given precedence over other calls and will be predicated upon availability of police units and other service needs.

“Panic alarm” means any device or system designed to alert law enforcement of a violent act or an immediate present threat of a violent act by manually activating a switch or button.

“Permittee” means the person to whom an alarm system permit is issued.

“Person” shall mean any individual, partnership, corporation, or other entity.

“Chief of Police” shall mean the Chief of Police of the Police Department of the City of Elk Grove or the Chief of Police's designee.

“Primary trunk line” means any telephone line, including 911 emergency lines, leading directly into the Communications Center of the Elk Grove Police Department for the purpose of handling emergency calls on a person-to-person basis, and which is

identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by the telephone company, covering the service area within the Elk Grove Police Department's jurisdiction.

"Silent alarm" shall mean any mechanical and/or electrical device designed for the detection of unauthorized entry on premises or for alerting another of the commission of an unlawful act which transmits a signal to a monitored, remote location.

"Standby power backup" shall mean any auxiliary, secondary, or backup power source capable of supplying adequate power to properly operate an alarm system should the primary power source be interrupted.

### **9.16.030 Permit required.**

#### **A. Alarm User.**

1. Except as otherwise provided hereafter, it shall be unlawful for any person to connect or operate, or to cause to be connected or operated, an alarm system in the City of Elk Grove without obtaining a valid alarm system permit within fifteen (15) days of connecting or commencing to operate an alarm system and keeping a valid alarm system permit in full force and effect at all times thereafter.

2. The application for an alarm system permit shall include an agreement, which the applicant must sign before the permit is issued, whereby the applicant/permittee agrees to reimburse the City for costs incurred by the City resulting from false alarms.

3. Persons owning or in possession of property on which an alarm system exists shall be responsible for securing the proper alarm system permit and such permit shall be issued only to the person who owns or is in possession of the property on which the alarm system exists.

4. The Chief of Police shall issue the alarm system permit within a reasonable period following the date of receipt of application, unless the alarm system does not comply with the specifications contained in this chapter, the applicant has failed to pay the required fee, or the application contains a misrepresentation of fact.

5. In the event the Chief of Police denies the permit to an applicant for any of the reasons set forth in subsection (A)(4) of this section, the applicant shall have the right to a hearing concerning the denial pursuant to EGMC Sections 9.16.090 and 9.16.100.

6. Any person who operates an alarm system without obtaining a permit as set forth in subsection (A)(1) of this section shall obtain a permit within thirty (30) days of receipt of a notice from the Elk Grove Police Department that a permit is required and shall pay the fee set forth in EGMC Section 9.16.040. Failure to obtain a permit and pay fees



within thirty (30) days of notice shall result in a fine as determined by resolution of the City Council.

7. Payment of Fee. An invoice shall be mailed to the alarm operator within thirty (30) days following the assessment of the fee. Fees are due and owing not later than thirty (30) days after the date of mailing the invoice. The date of mailing shall appear on the invoice. Fees received after the due date shall be subject to a late fee as determined by resolution of the City Council. Fees received more than sixty (60) days after the due date shall be subject to an additional late fee as determined by resolution of the City Council.

#### B. Alarm Companies.

1. No alarm company shall perform any installation, connection or maintenance of any alarm system in the City for which a valid permit has not been issued. The alarm company shall verify the existence of a valid permit either by obtaining a valid permit for the alarm user or by confirming the prior issuance of a permit, in writing, with the Elk Grove Police Department. Any installation, connection or maintenance of any alarm system by an alarm company for which no valid permit has been issued is an infraction punishable by a fine as determined by resolution of the City Council.

2. Any alarm company operator notified by the Elk Grove Police Department that an alarm system user's permit has been suspended, revoked, or not renewed, shall discontinue any and all service on such system within fifteen (15) days of notification.

#### **9.16.040 Alarm application permit and fee.**

A. Applications and reapplications for all permits required by this chapter shall be filed with the Elk Grove Police Department and shall be accompanied by fees set by resolution of the City Council. The fees are established to cover part of the cost of investigating and processing the applications, notices and permits and are not refundable. The Elk Grove Police Department shall prescribe the form of the application and request such information as is necessary to evaluate and act upon the permit application. Permits shall be for a term of three (3) years.

B. The application for an alarm system permit shall include an agreement, which the applicant must sign before the permit can be issued, whereby the applicant agrees to reimburse the City for a portion of the costs incurred by the City resulting from false alarms.

#### **9.16.050 Renewals, reapplications and information changes.**

A. Renewals. In order for the Police Department to update and verify records, each permittee shall be required to renew alarm system permits issued every three (3) years

for residences and businesses. Renewals will be at no cost if updated information is received before the three (3) year expiration of the permit. Failure to update information will result in a reapplication.

B. Reapplications. Permittees shall reapply for an alarm permit under any of the following conditions:

1. Whenever a permit has been revoked pursuant to this chapter;
2. Whenever a permit has expired and no renewal has been applied for within fifteen (15) days prior to the expiration date; or
3. Whenever additional systems are added to the premises, business or property.

C. Information Changes. The permittee shall inform the Elk Grove Police Department of any changes to information on the application within ten (10) days of such change. No fee shall be assessed to correct the information.

#### **9.16.060 False alarms.**

A. Three (3) or more false alarms in any calendar year shall result in the imposition of a fine as determined by resolution of the City Council. All fines shall be payable to the City of Elk Grove.

B. Payment of Fines. An invoice shall be mailed to the alarm user within thirty (30) days of the false alarm. The fine is due and owing not later than thirty (30) days after the date of mailing the invoice. The date of mailing shall appear on the invoice.

C. Discontinuance of Response. In addition to any other action that may be taken by the Elk Grove Police Department pursuant to this chapter, the Chief of Police or his or her designee may discontinue responding to an alarm at any location if the alarm user has not corrected the conditions that cause false alarms after the sixth (6<sup>th</sup>) false alarm within a calendar year. The period of nonresponse shall be determined by the Chief of Police, but shall not exceed six (6) months. The Chief of Police may shorten the period of nonresponse upon receipt of satisfactory evidence that the problem creating the false alarms has been corrected. In addition, the Chief of Police may discontinue responding to false alarms at a location if the alarm user at the location has failed to pay any false alarm fine(s) sixty (60) days after the date an invoice was mailed to the alarm user, until such time as such fines are paid, plus an additional five (5) business days in order to allow sufficient time to process payments.

D. Appeal. Any person may appeal the assessment of a false alarm fine by filing a notice of appeal with the Elk Grove Police Department within fifteen (15) days of the mailing of the invoice. The invoice shall advise the person to whom the fine is assessed

of the right to appeal. The notice of appeal shall state all reasons why the appealing party believes that the fine was improperly assessed and shall be accompanied by any documentary evidence that the appealing party wishes to be considered. The appeal and all documentation shall be reviewed by the Chief of Police or the Chief of Police's designee. The decision of the Chief of Police or the Chief of Police's designee shall be final. In the event that it is determined that the false alarm fine was improperly assessed, the fine shall be canceled.

**9.16.070 Responsibility for alarm service – Audible or silent.**

In case of either an audible or a silent alarm, the person or persons named in the alarm permit application or a person whose name is on file with the Police Department as a designated responding party shall, upon proper notification, proceed immediately to the location of the activated alarm and provide access to the premises to allow the Police Department to properly secure such premises.

All alarm service companies which contract to provide alarm response services within the City shall maintain service personnel on duty twenty-four (24) hours a day to provide for such responses.

**9.16.080 Suspension of permit.**

When grounds as hereafter provided exist, the Chief of Police may determine to suspend a permit. Suspensions of permits shall be for a maximum of three hundred sixty-five (365) days. Use of the alarm system during a suspension of the permit shall be a violation of this chapter.

The following shall constitute grounds for suspension of an alarm permit:

- A. The violation of any of the provisions of this chapter.
- B. A false statement on the permit application.
- C. Failure to pay any fee or fine assessed pursuant to this chapter.
- D. Six (6) or more false alarms during any calendar year.

**9.16.090 Appeal.**

If an application for a permit is denied or a permit is to be considered for suspension pursuant to EGMC Section 9.16.080, the Chief of Police shall serve on the applicant or permittee a written notice of the Chief of Police's proposed action including, in the case of suspension, the length of the proposed suspension, and of the right to a hearing on the matter. Service shall be by certified/registered mail to the applicant's or permittee's

last known address. Service shall be considered complete five (5) days after such mailing.

Any decision for a denial or suspension of a permit may be appealed pursuant to the appeals procedure set forth in EGMC Chapter 1.11.

**9.16.100 Issuance of administrative citations.**

Any person authorized to enforce provisions of this chapter may, in addition to any other means of enforcement, issue administrative citations to enforce the provisions of this chapter pursuant to the administrative citation procedures set forth in EGMC Chapter 1.12.

**9.16.110 Audible alarm systems.**

**A. Sirens Prohibited.**

1. No alarm system which has an audible alarm and which emits the sound of a siren shall be installed or connected on the outside of any building in the City, on or after the effective date of the ordinance codified in this chapter. This section shall not be construed to prohibit the use of certain electronic horns or howlers that may be approved by the Chief of Police or the Chief of Police's designee.

2. Any alarm system which has an audible alarm and which emits the sound of a siren and which is installed and in operation prior to the effective date of the ordinance codified in this chapter shall be disconnected within thirty (30) days after the effective date of the ordinance codified in this chapter. Anyone who installs or permits the installation of or uses such an alarm system is guilty of an infraction as provided in EGMC Section 9.16.130.

**B. Automatic Shutoff Required.** Any alarm system which is installed or connected on or after the effective date of the ordinance codified in this chapter and which, when activated, generates an audible alarm on the exterior of the structure in which the system is maintained, shall have as part of the alarm system an automatic shutoff device which shuts off the alarm system within twenty (20) minutes of initial activation. Any alarm system which is installed and in operation prior to the date the ordinance codified in this chapter becomes effective and which, when activated, generates an audible sound on the exterior of the structure in which the system is maintained, shall have such an automatic shutoff device, as described above, installed and in operation within sixty (60) days after the effective date of the ordinance codified in this chapter.

1. Any person who uses, or causes the installation of, an alarm system without the required shutoff is guilty of an infraction.

2. Any alarm company who installs an alarm system without the required shutoff is guilty of an infraction.

**9.16.120 Automatic calling/dialing systems prohibited.**

A. No automatic dialing device shall be interconnected to a primary trunk line of the Police Department. Any person who makes or permits the interconnection is guilty of an infraction.

B. Persons owning or leasing an automatic dialing system may have the device interconnected to a telephone line transmitting directly to:

1. A central station;
2. A modified central station; or
3. An answering service.

C. The relaying of messages to the Police Department by a central monitoring station, modified central station, or an answering service shall be over a primary trunk line.

D. No automatic dialing system may be interconnected to the telephone operator, city telephone operator, or 911 emergency center operator.

**9.16.130 Violation of chapter.**

A. Except as otherwise specifically provided, pursuant to the provisions of Section 36900 of the Government Code, violation of any of the provisions contained in this chapter shall constitute an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

The City Manager, or the Manager's designee, is the official charged with the responsibility for administering the provisions of this chapter. Pursuant to the provisions of Section 836.5 of the Penal Code, the Elk Grove Police Department shall be authorized to enforce and arrest persons without a warrant for violations of the provisions of this chapter.

The City Manager, or his designee, is hereby empowered to seek recovery of the fines or false alarm service fees by civil action in small claims court.

B. All remedies set forth in this chapter are cumulative and the use of one or more remedies shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

## **Chapter 9.17**

### **ON-SITE SECURITY REQUIREMENT**

Sections:

9.17.010 Purpose.

9.17.020 Definitions.

9.17.030 Security plan may be required for specified businesses.

9.17.040 Chief of Police may determine that a security plan is required.

9.17.050 Notice and enforcement process.

9.17.060 Payment required from businesses that do not comply with this chapter.

9.17.070 Appeal.

#### **9.17.010 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.

#### **9.17.020 Definitions.**

The following definitions shall be used in this chapter:

“Business” shall mean any business, including retail, office, industrial, warehousing, and other types of nonresidential land uses.

“Call for service” shall mean any request which results in the dispatching of uniformed police officers to a location, regardless of the source of the request.

“Chief of Police” shall mean the Chief of Police of the Elk Grove Police Department, or his or her designated representative.

“Incident” shall be any occurrence at a place of business which results in a call for service.

“Private security officer” shall have the same meaning as defined in Section 7582.1(e) of the State of California Business and Professions Code.

“Private security operator” and “private security service” shall have the same meaning as defined in Section 7582.1(a) of the State of California Business and Professions Code.

**9.17.030 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.

**9.17.040 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.

**9.17.050 Notice and enforcement process.**

A. Upon determining that a business or business center is subject to this chapter based on the number of 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) 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 on-site 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.

**9.17.060 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:

- A. Failing to respond to the initial notice from the Chief of Police; or
- B. 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.

**9.17.070 Appeal.**

All decisions of the Chief of Police pursuant to this chapter may be appealed pursuant to EGMC Chapter 1.11.

**Chapter 9.18**

**DISPLAY OF HARMFUL MATTER TO MINORS**

Sections:

- 9.18.000 Purpose.
- 9.18.010 Definitions.
- 9.18.020 Display in business establishments.
- 9.18.030 Display in newsracks or vending devices.



9.18.040 Exhibition in display windows.

9.18.050 Penalty for violation.

**9.18.000 Purpose.**

The City Council hereby finds that the exhibition of harmful matter to minors seriously threatens to corrupt their morals and character.

The interior of business establishments to which members of the general public are admitted constitute "public places" as referenced in Section 313.1(d) of the Penal Code. Business establishments to which members of the general public are admitted are not, when entered by minors, "a public place from which minors are excluded" as referenced in Section 313.1(d) of the Penal Code. It is the intent of this chapter to require business establishments frequented by members of the general public to either: (A) prevent minors from entering; or (B) shield harmful matter which minors may see with blinder racks in the manner prescribed herein.

It is also the purpose of this chapter to require blinder racks shielding from view harmful matter which may be viewed by minors from public property.

**9.18.010 Definitions.**

For purposes of this chapter, the following definitions shall apply:

A. "Blinder rack" shall mean any opaque item or device which rests on or in front of harmful matter in such a manner that the lower two-thirds (0.67) of the matter is not exposed to view.

B. "Business establishment" shall mean any indoor or outdoor commercial enterprise which distributes or exhibits harmful matter in such a manner that the harmful matter can be viewed by patrons inside the enterprise.

C. "Distribute" or "distribution" shall mean to transfer possession of, whether with or without consideration.

D. "Exhibit" or "exhibition" shall mean to show.

E. "Harmful" shall have the same meaning as the phrase "harmful matter" as defined in Section 313(a) of the California Penal Code, as said section may hereafter be amended.

F. "Matter" shall mean any book, magazine, newspaper, or other printed or written material, or any picture, drawing or photograph, or any statue or other figure.

G. "Minor" shall mean any natural person who is under the age of eighteen (18) years.

H. "Newsrack" or "vending device" shall mean a privately owned mechanism which is located on public property or located on private property in such a manner that the contents can be viewed by members of the general public from public property, and which contains harmful matter for purposes of distribution or exhibition which can be seen by the general public from public property.

I. "Person" shall mean any corporation, partnership or sole proprietorship which owns a business establishment, newsrack or vending device, and any natural person who is responsible for the operation or maintenance of a business establishment, newsrack or vending machine, including, but not limited to, clerks who are responsible for on-site operation or maintenance of a business establishment.

J. "Public property" shall mean any:

1. Sidewalk, pathway or street which is open to and traveled or utilized by members of the general public, whether legal title thereto is privately held or vested in a public agency, including, but not limited to, common areas in shopping malls frequented by patrons to gain access to retail enterprises; and

2. Parks, land or buildings operated by and in which a public agency possesses a property interest, which are open to members of the general public.

#### **9.18.020 Display in business establishments.**

It shall be unlawful for any person to own, operate or maintain any business establishment within the City to which members of the general public are admitted, unless at the time any minor is within the establishment blinder racks are placed in front of all harmful matter subject to view by patrons.

The provisions of this section shall not be construed to require placement of blinder racks in front of harmful matter displayed within a separate room or partitioned area within the interior of a business establishment frequented by minors when the harmful matter cannot be viewed from other areas of the establishment, unless minors enter the separate room or partitioned area where the harmful matter is displayed.

#### **9.18.030 Display in newsracks or vending devices.**

It shall be unlawful for any person to own, operate or maintain a newsrack or vending device within the City, unless blinder racks are placed in front of harmful matter thereon or contained therein.

#### **9.18.040 Exhibition in display windows.**

It shall be unlawful for any person who owns, operates or maintains a business establishment within the City to place harmful matter in a display window within the establishment in such a manner that the harmful matter can be viewed by members of the general public from public property, unless blinder racks are placed in front of the harmful matter.

#### **9.18.050 Penalty for violation.**

Any person who violates the provisions of this chapter shall be guilty of an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **Chapter 9.19**

#### **EMERGENCY SERVICES ORGANIZATION AND FUNCTIONS**

Sections:

9.19.010 Purpose.

9.19.020 Definitions.

9.19.030 Disaster Council.

9.19.031 Disaster Council powers and duties.

9.19.040 Director and Assistant Director of Emergency Services.

9.19.041 Powers and duties of the Director and Assistant Director of Emergency Services.

9.19.050 Emergency organization.

9.19.060 Emergency operations plan.

9.19.070 Expenditures.

9.19.080 Violations.

#### **9.19.010 Purpose.**

The declared purpose of this chapter is to provide for the preparation and carrying out of plans for the protection of persons and property within this City in the event of an

emergency, the direction of the emergency organization, and the coordination of the emergency functions of the City with all other public agencies, corporations, and affected private persons.

**9.19.020 Definitions.**

As used in this chapter, “emergency” shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than resulting from a labor controversy, which conditions are or are likely to be beyond the control of the service personnel, equipment, and facilities of this City, requiring the combined forces of other political subdivisions to combat.

**9.19.030 Disaster Council.**

The City of Elk Grove Disaster Council is hereby created and shall consist of the following:

- A. The Mayor, who shall be the chair.
- B. The Director of Emergency Services shall be the City Manager, who shall be vice chair.
- C. The Assistant Director of Emergency Services, appointed by the Director of Emergency Services.
- D. Such Emergency Operations Center Section Chiefs as are provided for in the current emergency plan of this City, adopted pursuant to this chapter.
- E. Such representatives of civic, business, labor, veteran, professional, or other organizations having an official emergency responsibility, as may be appointed by the Director with the advice and consent of the City Council.

**9.19.031 Disaster Council powers and duties.**

It shall be the duty of the City of Elk Grove Disaster Council, and it is hereby empowered, to develop and recommend for adoption by the City Council emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as are necessary to implement such plans and agreements. The Disaster Council shall meet upon call of the chair or, in his absence from the City or inability to call such meeting, upon call of the vice chair.

**9.19.040 Director and Assistant Director of Emergency Services.**

A. There is hereby created the office of Director of Emergency Services. The City Manager of the City of Elk Grove shall be the Director of Emergency Services.

B. There is hereby created the office of Assistant Director of Emergency Services, who shall be appointed by the Director.

**9.19.041 Powers and duties of the Director and Assistant Director of Emergency Services.**

A. The Director, or his or her successor, is hereby empowered to:

1. Request the City Council to proclaim the existence or threatened existence of a local emergency if the City Council is in session, or to issue such proclamation if the City Council is not in session. Whenever a local emergency is proclaimed by the Director, the City Council shall take action to ratify the proclamation within seven (7) days thereafter or the proclamation shall have no further force or effect.

2. Request the Governor to proclaim a state of emergency when, in the opinion of the Director, the locally available resources are inadequate to cope with the emergency.

3. Control and direct the efforts of the emergency organization of this City for the accomplishment of the purposes of this chapter.

4. Direct cooperation between and coordination of services and staff of the emergency organization of this City and resolve questions of authority and responsibility that may arise between them.

5. Represent this City in all dealings with public or private agencies on matters pertaining to emergencies as defined herein.

6. In the event of the proclamation of a local emergency as herein provided, the proclamation of a state of emergency by the Governor or the Director of the State Office of Emergency Services, or the existence of a state of war emergency, the Director is hereby empowered:

a. To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations must be confirmed at the earliest practicable time by the City Council;

b. To obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use;

- c. To require emergency services of any City officer, employee or contractor and, in the event of the proclamation of a state of emergency in the county in which this City is located or the existence of a state of war emergency, to command the aid of as many citizens of this community as he deems necessary in the execution of his duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers;
- d. To requisition necessary personnel or materials of any City department, agency or contractor; and
- e. To execute all of his ordinary powers as City Manager, all of the special powers conferred upon him by this chapter or by resolution or emergency plan pursuant hereto adopted by the City Council, all powers conferred upon him by any statute, by any agreement approved by the City Council, and by any other lawful authority.

B. The Director of Emergency Services shall designate the order of succession to that office, to take effect in the event the Director is unavailable to attend meetings and otherwise perform his duties during an emergency. Such order of succession shall be approved by the City Council.

C. The Assistant Director shall, under the supervision of the Director and with the assistance of Emergency Service Chiefs, develop emergency plans and manage the emergency programs of this City, and shall have such other powers and duties as may be assigned by the Director.

#### **9.19.050 Emergency organization.**

All officers and employees of this City, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons impressed into service under the provisions of EGMC Section 9.19.041(A)(6)(c), be charged with duties incident to the protection of life and property in this City during such emergency, shall constitute the emergency organization of the City of Elk Grove.

#### **9.19.060 Emergency operations plan.**

The City of Elk Grove Disaster Council shall be responsible for the development of the City of Elk Grove emergency operations plan, which plan shall provide for the effective mobilization of all of the resources of this City, both public and private, to meet any condition constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council.

### **9.19.070 Expenditures.**

Any expenditure made in connection with emergency activities, including mutual aid activities, shall be deemed as conclusive to be for the direct protection and benefit of the inhabitants and property of the City of Elk Grove.

### **9.19.080 Violations.**

It shall be a misdemeanor, as authorized by Section 8665 of the Government Code, which shall be enforced pursuant to the provisions of EGMC Chapter 1.04, for any person, during an emergency, to:

A. Willfully obstruct, hinder, or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter.

B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy or imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof.

C. Wear, carry, or display, without authority, any means of identification specified by the emergency agency of the state.

## **Chapter 9.20**

### **SEX OFFENDERS' PROXIMITY TO CHILDREN'S FACILITIES**

Sections:

9.20.010 Definitions.

9.20.020 Prohibitions.

9.20.030 Violation.

#### **9.20.010 Definitions.**

"Children" means those persons who are under the age of eighteen (18) years of age.

"Sex offender" means a person who has been required to register with a governmental entity as a sex offender under Section 290 of the California Penal Code.

“Loitering” means to delay, to linger or to idle about without a lawful purpose for being present.

“School” means the buildings and grounds of any public or private school used for purposes of the education of children in kindergarten or any of the grades 1 to 12, inclusive.

“Day Care Center” means any licensed child day care facility including infant centers, preschools, extended day care facilities, and school age childcare centers. It does not include a family day care home as defined in Section 1596.78 of the California Health and Safety Code, unless prior notice has been given to the suspect.

#### **9.20.020 Prohibitions.**

A. A sex offender is prohibited from loitering within three hundred (300' 0”) feet of the following locations when children are present:

1. The grounds of public or private schools for children;
2. Day care centers;
3. Public and private playgrounds and children’s play facilities, parks, teen centers, youth sports facilities, skate parks, and public swimming pools.

B. For purposes of this section, distances shall be measured from the edge of the parcel where the identified use is located.

#### **9.20.030 Violation.**

Any person violating this chapter is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **Chapter 9.36**

#### **PARK REGULATIONS**

Sections:

9.36.010 Definitions.

9.36.015 Application of chapter to park districts.

9.36.020 Permit – Application contents.

9.36.021 Permit – Standards for issuance.



9.36.030 Violation of regulations – Sanctions.

9.36.035 Penalties.

9.36.040 Closure of facilities.

9.36.041 Park fees – Purpose.

9.36.042 Park fees – Establishment.

9.36.043 Park fees – Criteria.

9.36.044 Violations.

9.36.045 Violations – Group vehicle parking fees.

9.36.049 Schedule of fees.

9.36.050 Failure to obtain required permit.

9.36.051 Priority of use.

9.36.052 Exhibiting permit.

9.36.053 Selling and advertising.

9.36.054 Restrooms and washrooms.

9.36.055 Water pollution.

9.36.056 Refuse.

9.36.057 Smoking.

9.36.058 Consumption of alcoholic beverages.

9.36.059 Fires.

9.36.060 Fireworks.

9.36.061 Firearms, air guns, and other weapons.

9.36.062 Animals.

9.36.063 Real property – Appropriation or encumbrance.

9.36.064 Property – Use of.

9.36.065 Locks and keys.

- 9.36.066 Motorized vehicles.
- 9.36.067 Bicycle trails and bicycles.
- 9.36.068 Prohibition of skates in park facilities.
- 9.36.069 Hours of use.
- 9.36.070 Games.
- 9.36.071 Swimming.
- 9.36.072 Boats.
- 9.36.073 Regulations.
- 9.36.074 Sound amplification equipment.
- 9.36.076 Glass beverage containers – Purpose.
- 9.36.077 Glass beverage containers – Prohibition.
- 9.36.078 Concessions.
- 9.36.079 Public nuisance.
- 9.36.080 Authority to arrest and cite.
- 9.36.081 Parking regulations enforcement.

**9.36.010 Definitions.**

As used in this chapter:

- A. “City” means the City of Elk Grove.
- B. “Department” means the Public Works Department or other department that has been assigned responsibility and maintenance of City of Elk Grove Parks by the City Manager of the City of Elk Grove.
- C. “Director” means the Public Works Director or his or her authorized representative.
- D. “Facility” or “park facility” means any body of water, land, campsite, recreational area, play field, building, structure, system, equipment, machinery or other appurtenance owned, managed, controlled or operated by the Public Works Department.

**9.36.015 Application of chapter to park districts.**

The provisions of this chapter apply to all facilities under the jurisdiction of the City of Elk Grove and to all facilities under the jurisdiction of a Recreation and Park District organized pursuant to the provisions of the Public Resources Code, commencing with Section 5780, including any such district governed by the City Council acting ex officio as the District Board of Directors and any such District governed by an elected Board of Directors. As used in this chapter with reference to a facility under the jurisdiction of any such district:

A. "Board of Supervisors" means the Board of Directors of the District which has jurisdiction.

B. "Department" means the Recreation and Park District which has jurisdiction.

C. "Director" means the Administrator of the Recreation and Park District which has jurisdiction or other authorized representative of such district.

D. "Facility" or "park facility" means any body of water, land, campsite, recreation area, play field, building, structure, system, equipment, machinery, or other appurtenance owned, managed, controlled or operated by the Recreation and Park District having jurisdiction.

**9.36.020 Permit – Application contents.**

Whenever a permit is required by provisions in this chapter, an application shall be filed with the Director stating:

A. The name and address of the applicant;

B. The name and address of the person, group, organization or corporation sponsoring the activity;

C. The nature of the proposed activity;

D. The dates, hours, and park facility for which the permit is desired;

E. An estimate of attendance; and

F. Any other information which the Director, regarding public health, safety and welfare, finds reasonably necessary to a fair determination as to whether a permit should be issued.

**9.36.021 Permit – Standards for issuance.**

The Director shall issue a permit hereunder when he finds:

- A. That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;
- B. That the proposed activity or use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety, and recreation;
- C. That all conditions including, where applicable, the payment of fees, approval of the City Council, and insurance coverage are met;
- D. That the proposed activity or use is not reasonably anticipated to incite violence, crime, or disorderly conduct;
- E. That the proposed activity or use will not entail unusual, extraordinary, or burdensome expense or security operation by the department; and
- F. That the facilities desired have not been reserved for other use.

**9.36.030 Violation of regulations – Sanctions.**

- A. Notwithstanding the provisions of EGMC Chapter 1.04, and except as provided in EGMC Section 9.36.035(E), and unless otherwise stated in this chapter, a violation of any of the provisions of this chapter, or failure to comply with any of the regulatory requirements of this chapter, is an infraction subject to the procedures described in Sections 19(c) and (d) of the California Penal Code.
- B. The Director shall have the authority to revoke a permit upon a finding of violation of any regulation contained in this chapter or upon a finding of violation of other City ordinance or law of this state.
- C. The Director shall have the authority to eject from any park facility any person acting in violation of regulations contained in this chapter.
- D. The regulations contained herein shall not prohibit any person authorized by the Director from the normal exercise of requested, assigned, or contractual duties.

**9.36.035 Penalties.**

- A. Except as provided in subsection (E) of this section, every violation of this chapter constituting an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.
- B. Except as provided in subsection (E) of this section, every violation of this chapter constituting a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

C. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by any such person, and shall be punished accordingly.

D. Malicious injury or destruction of any real or personal property which constitutes vandalism under the provisions of Section 594 of the Penal Code of the state of California shall be prosecuted as a violation of Section 594 of the Penal Code and shall be punishable as either a misdemeanor or a felony, as provided in Section 594 of the Penal Code. Under Section 594 of the Penal Code, if vandalism results in damage of \$1,000 or more, the vandalism may constitute a felony punishable by a fine of \$1,000 or up to a year in state prison, or both.

E. Any person violating or failing to comply with the provisions of EGMC Section 9.36.044(A) or (B) or 9.36.066(D) or (E) shall be subject to civil penalties, fees, charges and procedures as set forth in EGMC Section 10.04.100.

#### **9.36.040 Closure of facilities.**

The Director shall have the authority to close any park facility or portion thereof and require the exit of all persons therein when he determines that conditions exist in said facility or portion thereof which present a hazard to the facility or to public safety.

#### **9.36.041 Park fees – Purpose.**

Section 50402 of the Government Code of the state of California provides that a City may charge for use or services provided in City parks so long as the charges do not exceed the cost of service. The purpose of this section and EGMC Sections 9.36.042, 9.36.043, 9.36.044, and 9.36.049 is to provide for park fees to be charged by the Department of Parks and Recreation for various park services and facilities within the parks in amounts reasonably necessary to recover the cost of operating the parks and providing the various services and facilities therein.

#### **9.36.042 Park fees – Establishment.**

By resolution duly adopted, the Department of Parks and Recreation may charge fees for park use and use of various facilities or services at one or more of the City parks or recreation facilities, and add to, subtract from, increase or decrease such charges.

#### **9.36.043 Park fees – Criteria.**

Park fees and user fees for City parks, recreation facilities and services within City parks established pursuant to this chapter shall comply with the following criteria:

A. Park fees on a per person or per vehicle basis, or both, may be charged in amounts reasonably necessary to recover the costs of facilities, capital improvements,

maintenance and operation of City parks and recreation facilities, enforcement and policing of regulations governing park use, and associated administrative costs.

B. User fees for facilities and services within City parks and recreational facilities shall be charged in amounts reasonably necessary to recover the cost of providing the facilities and services. Examples of the types of facilities and services for which fees may be charged include, but are not limited to, the following: parking; swimming; ball field lighting and utilities; water parks and water play areas/structures; reservation of buildings and other facilities for exclusive use; participation in organized athletic and other programs of recreation; and golf greens fees.

#### **9.36.044 Violations.**

A. It is unlawful for any person to enter or remain in any park facility without having paid the required fee.

B. Whenever the Director determines that parking or standing of vehicles in City parks would be disruptive to park users or create dangerous conditions, then the Director shall provide for the erection and posting of signs indicating that the parking or standing of vehicles is prohibited, limited or restricted. It is unlawful for any person to park a vehicle or allow a vehicle to stand in a City park contrary to the prohibitions of any sign authorized by this section.

#### **9.36.045 Violations – Group vehicle parking fees.**

The prohibitions of EGMC Section 9.36.044 shall not apply to vehicle parking fees for any organization or group which is expressly authorized in writing by the Director to pay such fees following use of a park facility.

#### **9.36.049 Schedule of fees.**

The schedule of fees may be established by duly adopted resolution and shall be applicable to the indicated City of Elk Grove parks and recreation facilities during the hours of operation of those parks and facilities.

The Director shall determine the hours of operation of City of Elk Grove parks and recreation facilities based on the following criteria:

A. Weather conditions;

B. Seasonal recreational activities scheduled or expected to occur at the parks or recreation facilities;

C. Nature or extent of public use of the parks or recreation facilities;

D. Cost effectiveness of operation of the parks or recreation facilities.

**9.36.050 Failure to obtain required permit.**

No person shall use, occupy, or otherwise remain in any park facility or portion thereof for which a permit is required without first having obtained such permit.

**9.36.051 Priority of use.**

Any person using a park facility or portion thereof which may be reserved by obtaining a permit, but who has not obtained such a permit, shall vacate said area when holders of a valid permit present themselves.

**9.36.052 Exhibiting permit.**

No person shall fail to produce and exhibit a permit he claims to have upon request of any Department employee or any peace officer who desires to inspect said permit for the purpose of enforcing compliance with any regulations in this chapter.

**9.36.053 Selling and advertising.**

A. Within the boundaries of any park facility, no person shall sell, vend, peddle, expose, offer for sale, or distribute after sale to the public any merchandise, service, or property, or sell tickets for any event; nor shall any person distribute, circulate, give away, throw, or deposit in or on any park facility any handbills, circulars, pamphlets, papers, or advertisements, which material calls the public attention in any way to any article or service for sale or hire; nor within any park facility shall any person solicit or collect donations of money or other goods from the public, without express approval of the City Council for such activity within the specific park facility. The Director shall have the authority to allow not-for-profit permittees to sell, vend, peddle, expose, offer for sale, or distribute after sale to the public any merchandise, service, or property, or sell tickets for any event as fund raising to cover the cost of the City user fees and the permitted event(s)

B. A request for approval as required by this section shall be submitted to the City Council for any activity which requires a written contractual agreement. The Director may approve any other request unless, in the discretion of the Director, the request is an unusual one which should be submitted to the Council for approval.

**9.36.054 Restrooms and washrooms.**

Male persons shall not enter any restroom or washroom set apart for females, and female persons shall not enter any restroom or washroom set apart for males, except this shall not apply to children under the age of six (6) years who are accompanied by a

person who is of the sex designated for that facility and who has reason to be responsible for that child. A violation of the provisions of this section is a misdemeanor.

#### **9.36.055 Water pollution.**

While within the boundaries of any park facility, no person shall throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay, or other body of water or in any tributary, stream, or drain flowing into such waters, any substance, matter, or thing, liquid or solid, including, but without limitation to, particles or objects made of paper, metal, glass, garbage, rubbish, rubber, fuel, food matter, wood, fiber, and plastics.

#### **9.36.056 Refuse.**

No person shall dump, deposit, or release any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, refuse, or trash in or on any park facility, except that refuse which is incidental to the use of the facility may be deposited in the receptacles provided therefor. For purposes of this section, an incinerator, stove, fire ring, barbecue, or other device used to contain fires or for cooking is not a proper receptacle for refuse or other waste material.

#### **9.36.057 Smoking.**

No person shall smoke any substance in any area designated as a nature trail or nature area or in or on any park facility where smoking is prohibited.

#### **9.36.058 Consumption of alcoholic beverages.**

A. No person shall possess any can, bottle or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which has been partially removed, in any area designated as a nature trail or nature area or on or within any park or park facility which has been posted with signs prohibiting such possession. The governing body of the entity owning the park facility may, by resolution, designate, or authorize the Director to designate, the park or park facilities to be posted.

B. It shall be unlawful for any person under twenty-one (21) years of age to be in possession of an alcoholic beverage while such person is in or upon any park facility. Notwithstanding any other provision of this code to the contrary, violation of the provisions of this section shall constitute an infraction, and shall be punishable pursuant to the provisions of Section 25132 of the Government Code.



**9.36.059 Fires.**

A. Without a permit issued by the Director, no person shall ignite, maintain, or use any fire in any place within any park facility except in a barbecue cooker or other cooking device authorized by the Director for that purpose.

B. No person shall ignite or maintain a fire of materials deposited in any can, box, trench, pit, or other receptacle maintained for the purpose of garbage disposal or incineration.

**9.36.060 Fireworks.**

No person shall possess or ignite in any manner any firecracker or fireworks, including any article for the making of a pyrotechnic display. Nothing contained in this section, however, shall prohibit any discharge or display of fireworks defined and classified as "safe and sane fireworks" in Section 12504 of the California Health and Safety Code at any public gathering or patriotic celebration provided a permit for such discharge or display has been obtained from the Director.

**9.36.061 Firearms, air guns, and other weapons.**

No person other than peace officers in the discharge of their duties shall use, maintain, possess, fire, or discharge any firearm, air gun, spring gun, bow and arrow, slingshot, or any other weapon potentially dangerous to wildlife or human safety, except in areas, at times, and under conditions designated by the Director for such use. A violation of the provisions of this section is a misdemeanor.

**9.36.062 Animals.**

No person shall:

A. Hunt, molest, harm, provide a noxious substance to, frighten, kill, trap, chase, tease, shoot, or throw missiles at any animal within the boundaries of any park facility, nor remove or have in his possession the young, eggs, or nest of any such creature;

B. Abandon any animal, dead or alive, within any park facility;

C. Remove any animal not his own within any park facility; exception is made to the foregoing in that in proper season, fish may be fished and removed from areas designated for fishing by licensed persons, and boarded horses may be removed from a park facility upon proper notification to the Department;

D. Bring into, maintain or allow in or upon any park facility any dog, cat, or other animal except a horse, unless such animal at all times is kept on a leash of sufficient strength and durability that it cannot be broken by the animal so leashed, and no longer than six

(6' 0") feet in length, and is under the full and complete physical control of its owner or custodian at all times, except that all dogs, cats or other animals shall be prohibited at all times in or upon any area, or within fifteen (15' 0") feet of such an area, designated as a nature study area, horse trail, or bicycle trail; provided, however, the Director may designate areas and times within which persons may show, demonstrate, or train unleashed animals but under full control of their owners or custodians;

E. Permit cattle, sheep, goats, horses, or other animals owned by him or in his possession to graze within the boundaries of any park facility without express approval of the City Council;

F. Ride a horse, pony, mule, burro, or any other animal upon, over or across any park facility, except at times and upon roads or trails designated for the riding of such animals or as otherwise provided within a properly issued permit;

G. Permit any animal owned by him, or in his possession, to be brought into or remain upon the premises of any park facility if the Director has given oral or written notice to remove that animal from such premises. The Director may give such notice if such animal is known to the Director to at any time have caused any injury or damage to any person, other animal or property of another while upon the premises of any park facility;

H. Permit or suffer any animal owned by him, or in his possession, custody, or control, to defecate upon park facility property without immediately removing such animal feces, placing said feces in a sealed bag or other sealed container, and placing such bag or container with feces in a proper refuse receptacle. Persons with horses in their possession, custody, or control, at times and upon roads or trails designated for the riding of such animal, and unsighted persons while relying on a guide dog, are exempt from the provisions of this subsection;

I. A violation of any of the provisions of this section shall be enforced pursuant to the provisions of EGMC Chapter 1.04 as follows:

1. A first violation of any of the provisions of this section is punishable as an infraction; and

2. A second or subsequent violation of the same provisions of this section committed within thirty (30) days of the previous violation shall be a misdemeanor.

### **9.36.063 Real property – Appropriation or encumbrance.**

No person shall deposit any earth, sand, rock, stone, or other substance within any park facility; nor shall he dig or remove any such material from within any park facility; nor shall he erect or attempt to erect any building, wharf, or structure of any kind by driving or setting up posts or piles; nor in any manner appropriate or encumber any portion of

the real property owned, operated, controlled, or managed by the Department, without a permit from the Director.

**9.36.064 Property – Use of.**

No person shall:

A. Dig up, pick, remove, mutilate, injure, cut, or destroy any turf, tree, plant, shrub, bloom, flower, artifact, or archeological site, or any portion thereof;

B. Cut, break, injure, deface, or disturb any building, sign, fence, bench, structure, apparatus, equipment, or property, or any portion thereof; or

C. Without a permit from the Director, make or place on any tree, plant, shrub, bloom, flower, building, sign, fence, bench, structure, apparatus, equipment, or property, or any portion thereof, any rope, wire, mark, writing, printing, sign, card, display, or similar inscription or device.

**9.36.065 Locks and keys.**

No person other than one acting under the direction of the Director shall duplicate or cause to be duplicated a key used by the department for a padlock or door lock of any type or description, nor shall any person divulge the combination of any lock so equipped to any unauthorized person.

**9.36.066 Motorized vehicles.**

A. While within the boundaries of any park facility, no person shall drive or operate any automobile, motorcycle, motor scooter, trail bike, dune buggy, truck, or other motorized vehicle on roads or trails other than those designated for that purpose without a permit from the Director.

B. While within the boundaries of any park facility, no person shall drive any automobile, motorcycle, motor scooter, truck, or other motorized conveyance, except an authorized emergency vehicle, at a rate of speed exceeding twenty-five (25 mph) miles per hour, except as may be otherwise posted by the Director, or in any case at speeds exceeding safe conditions dictated by prevailing circumstances.

C. No person shall operate any automobile or other motorized vehicle within the boundaries of any park facility unless such vehicle is currently licensed, except unlicensed vehicles may be operated in areas designated and posted for such use and in accordance with the rules established for such areas.

D. No person shall park any automobile or other motorized vehicle within any park facility except in areas specifically designated as parking areas. In no case shall any person park a motorized vehicle in a manner that presents a hazard to the public.

E. No person shall park or otherwise allow automobiles and other conveyances to remain within the boundaries of any park facility during the hours the facility is closed without a permit from the Director.

F. No person shall abandon any motorized vehicle within the boundaries of a park facility.

G. No person shall wash or repair any automobile or other motorized vehicle within the boundaries of any park facility.

H. All motorized vehicles within the boundaries of any park facility shall be equipped with a properly installed muffler device which is in constant operation and which prevents excessive or unusual noise. No such muffler device or exhaust system shall be equipped with a cutout, bypass, or similar device.

#### **9.36.067 Bicycle trails and bicycles.**

Within the boundaries of any park facility no person shall:

A. Operate any motorized vehicle, including, without limitation, motorcycles, trail bikes, or motorized bicycles upon any bicycle trail except at street, driveway or access road intersections for the purpose of crossing a bicycle trail, without a permit from the Director;

B. Use any portion of a bicycle trail while on roller skates or a skateboard, except that roller skating may be allowed on portions of a bicycle trail designated for such use by the Director and where signs allowing such use have been placed;

C. Hold any competitive event on any bicycle trail without a permit from the Director;

D. Ride a bicycle on any grassy area, path, or walkway designated for pedestrian or equestrian use. A bicyclist shall be permitted to push a bicycle by hand over any such grassy area, path or walkway;

E. Leave a bicycle in any place or position where other persons may trip over or be injured by it;

F. Ride a bicycle on a designated off-street bicycle trail in excess of fifteen (15 mph) miles per hour, except for permitted competitive events; or in a manner which is unsafe or which may be injurious to the rider or other persons, except for permitted competitive events;

G. Ride a bicycle upon any unpaved road, trail or area, except on authorized fire roads, service roads or paths designated for bicycle use.

**9.36.068 Prohibition of skates in park facilities.**

Except as provided in EGMC Section 9.36.067 and in such areas specifically designated for the use of such devices, no person shall ride upon a skateboard, roller skates, in-line skates, roller skis, or a similar device within the boundaries of any park facility where the use of such devices has been prohibited by the posting of a sign or signs prohibiting such activity in locations which give users of the park facilities adequate notice and which clearly state the areas or locations of prohibition.

**9.36.069 Hours of use.**

The Director is authorized to promulgate reasonable opening and closing hours for park facilities. No person shall enter, remain in, or camp in or on any park facility during the hours or any part of the hours said facility is closed without a permit from the Director.

**9.36.070 Games.**

The playing of rough or comparatively dangerous games such as football, baseball, horseshoes, soccer or of any games involving thrown, hit, or otherwise propelled objects such as golf balls, balls of other description, stones, arrows, javelins, or model airplanes is prohibited except in fields, courts, or areas specifically provided therefor, or, with express permission of the Director, in areas compatible to said use. Persons desiring to use a park facility for the specific purpose for which the facility was established shall have priority of use over persons using said facility for another nonproscribed purpose.

**9.36.071 Swimming.**

No person shall swim, bathe, or wade in any water or waterways within any park facility when such activity is prohibited and so posted by the Director upon his finding that use of the water would be dangerous to the user, incompatible with the function of the facility, or inimical to public health.

**9.36.072 Boats.**

Regulations governing the use of boats within any park facility may be established and posted by the Director. Said regulations shall promote the safety of swimmers and boaters, the protection of property, and general public enjoyment of the facility.

### **9.36.073 Regulations.**

The Director may establish and post regulations governing the use of park facilities which are not inconsistent with regulations contained in this chapter and which promote public health and safety and the preservation of property.

### **9.36.074 Sound amplification equipment.**

Within any park facility, no person shall use sound amplification equipment in excess of the noise levels provided by the Zoning Code without a permit from the Director.

### **9.36.076 Glass beverage containers – Purpose.**

The City of Elk Grove operates and maintains its parks and park facilities for the use, benefit, recreation and enjoyment of the general public. However, the City's park facilities accumulate significant amounts of litter annually, a large percentage of which consists of randomly discarded glass beverage containers. The recurring and increasing presence of broken glass resulting from such discarded containers poses a serious threat to the public safety at such park facilities, and unreasonably interferes with the public's use and enjoyment thereof. Broken glass is a unique form of litter in that it can virtually elude clean-up efforts. Submerged or otherwise concealed broken glass has resulted in injuries to park visitors involving deep cuts, lacerations and other complications. In almost all cases, advanced medical care beyond basic first aid was required, with most cases requiring suture of lacerations. Additionally, some victims required treatment for shock. In some cases, it appeared likely that surgery would be required to repair nerve, cartilage or tendon damage. Many more such injuries occur, yet go unreported.

It is therefore essential to the preservation of the public peace, health, welfare and safety, and the furtherance of safe public use and enjoyment of City parks and park facilities, that the presence of glass beverage containers upon such premises be prohibited.

### **9.36.077 Glass beverage containers – Prohibition.**

No person shall possess any cup, tumbler, bottle, jar or other container made of glass and used for carrying or containing any liquid for drinking purposes within any park or on any body of water or within any other park or park facility which has been posted with signs prohibiting such possession, except in locations where such containers are permitted under the terms of a lease, operating agreement or permit. The governing body of the public entity owning or managing such park or park facility may by resolution designate, or authorize the Director to designate, the park or park facilities to be posted.

### **9.36.078 Concessions.**

A. The sale of goods and services, including, but not limited to, food products, apparel, instructional lessons, and entertainment, by natural persons or entities for commercial gain potentially adversely and seriously impacts the use of park lands and park facilities for use by the public for recreational purposes. Any such sales must be regulated through the use of concession contracts to ensure that the goods and services marketed will promote the beneficial use of park facilities for recreational purposes.

B. It shall be unlawful for any person or entity to enter on and use park lands or facilities owned by the City for the purpose of selling goods or services for commercial gain without having first applied for and obtained from the City Council a concession contract authorizing the sales and otherwise regulating the time, place, and manner of such sales. The violation of this subsection shall be punishable as an infraction as provided in EGMC Section 9.36.035.

C. The provisions of this section shall not be deemed to apply to the sale or distribution of newspapers, books, pamphlets, or other activity constituting protected speech under the First Amendment of the United States Constitution or comparable protections under the California Constitution.

### **9.36.079 Public nuisance.**

Any violation of the provisions of this chapter constitutes a public nuisance.

### **9.36.080 Authority to arrest and cite.**

A. City of Elk Grove Park Facilities – Employees. Pursuant to the Public Resources Code, the City of Elk Grove Director of Parks and Recreation, and uniformed Park and Recreation Employees that may be designated by the Director, shall have the authority and immunities of public officers and employees as set forth in Section 836.5 of the Penal Code to make arrests and issue citations in accordance with the provisions of Chapter 5C (commencing with Section 853.6), Title 3, Part 2 of the Penal Code, for misdemeanor violations of the laws of the state of California and ordinances of the City of Elk Grove committed within their presence in a City park or City recreation area.

B. City of Elk Grove Park Facilities – Park Ranger. Pursuant to authorization granted by subsection (b) of Section 830.31 of the Penal Code, those employees designated Park Rangers by the City of Elk Grove Park Director shall have the power of peace officers as provided in Section 830.31 of the Penal Code. Such designation as Park Ranger may be made when the employee is regularly employed and paid in that capacity and if the primary duty of the peace officer is the protection of City of Elk Grove park facilities and the preservation of peace therein.

C. Recreation and Park Districts. Pursuant to the authorization of Section 5782.26 of the Public Resources Code, the Director of a Recreation and Park District created pursuant to Section 5780 et seq. of the Public Resources Code, and uniformed park and recreation employees designated by the Director, shall have the authority and immunities of public officers and employees as set forth in Section 836.5 of the Penal Code to make arrests and issue citations in accordance with the provisions of Chapter 5C (commencing with Section 853.5), Title 3, Part 2 of the Penal Code, for misdemeanor and infraction violations of state of California law, ordinances of the City of Elk Grove, or park and recreation district regulations or ordinances, when the violation is committed within the park and recreation district and in the presence of the Director or employee issuing the citation.

**9.36.081 Parking regulations enforcement.**

Pursuant to Section 836.5 of the Penal Code, employees of the City assigned to the classes of Park Ranger Assistant, Park Ranger I, Park Ranger II, and Park Ranger III are hereby designated and shall have the duty to enforce parking regulations as enumerated in Chapter 10.24 EGMC and may make arrests and issue citations for violations of such parking regulations as provided in Section 836.5 of the Penal Code.

**TITLE 10**

**VEHICLES AND TRAFFIC**

**Chapters:**

**10.04 Interpretation**

**10.08 Definitions**

**10.12 Enforcement**

**10.16 Signs and Signals**

**10.20 Pedestrians and Crosswalks**

**10.24 Parking Regulations**

**10.28 Parking Meters**

**10.32 Miscellaneous Driving Rules**

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**10.40 Truck Routes**

**10.41 Interstate Truck Terminals and Access Routes**

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**10.58 Off-Road Vehicles**

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**10.66 Regulation of Cruising**

**10.68 Illegal Speed Contests and Exhibitions of Speed**

**10.70 Impoundment of Vehicles Used in Illegal Speed Contests and Exhibitions of Speed**

## **Chapter 10.04**

### **INTERPRETATION**

Sections:

10.04.010 Short title.

10.04.020 Conviction of violation.

10.04.030 Scope.

10.04.040 Deputies.

10.04.050 Powers of the City Council.

10.04.060 Effect of resolution.

10.04.080 Penalty.

10.04.090 Minimum penalty.

10.04.100 Civil penalties, fines, fees, and charges for parking and related violations.

10.04.110 Civil penalty provisions.

**10.04.010 Short title.**

This title shall be known as, and may be cited as, "the traffic ordinance."

**10.04.020 Conviction of violation.**

Any conviction for a misdemeanor under any ordinance repealed by the ordinance codified herein, which misdemeanor is continued as a public offense by this title, constitutes a conviction under this title for any purpose for which it constituted a conviction under the act repealed.

**10.04.030 Scope.**

Except as explicitly otherwise stated, this title does not apply to traffic or to vehicles on private streets.

Any provision of this title which regulates traffic or delegates the regulation of traffic upon state highways in any way for which the approval of the state Department of Public Works is required by state law shall cease to be operative six (6) months after receipt by the City Council of written notice of withdrawal of approval of the state Department of Public Works.

Whenever this title delegates authority to a City officer or authorized action by the City Council to regulate traffic upon a state highway in any way which by state law requires the prior approval of the state Department of Public Works, no such officer shall exercise such authority nor shall such action by the City Council be effective with respect to any state highway without the prior approval in writing of the state Department of Public Works when and to the extent required by the Vehicle Code.

**10.04.040 Deputies.**

Whenever, by the provisions of this title, a power is granted to a public officer or a duty imposed upon such officer, the power may be exercised or duty performed by a deputy of the officer or by a person authorized pursuant to law by the officer, unless it is expressly otherwise provided.

**10.04.050 Powers of the City Council.**

The City Council may exercise by resolution any rights, powers or authority granted to it by the provisions of the Vehicle Code where such provisions authorize the Council to act by resolution.

#### **10.04.060 Effect of resolution.**

Any and all resolutions passed and adopted by the Council or any administrative order given pursuant to the provisions of this title or pursuant to the provisions of the Vehicle Code affecting any matter covered in this title shall be deemed to be a part of this title and any violations of the provisions of such resolution or order shall be deemed to be a violation of this title to the same extent as if such resolution or order were fully set out herein.

#### **10.04.080 Penalty.**

Except as provided in EGMC Sections 10.04.100 and 10.04.110, any person violating or failing to comply with any of the provisions of this title shall be deemed guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

#### **10.04.090 Minimum penalty.**

Except as provided in EGMC Sections 10.04.100 and 10.04.110, in any case where a jail sentence is not imposed or where the jail sentence is less than two (2) days, or if the jail sentence is suspended in whole or in part, a fine shall be imposed for a violation of this title in not less than the following amounts:

- A. In any case, \$1.00;
- B. When it is necessary to issue a notice to the violator, \$2.00;
- C. If it is necessary to issue a warrant to bring the violator into court, \$10.00.

#### **10.04.100 Civil penalties, fines, fees, and charges for parking and related violations.**

A. Purpose. It is the intention of the City Council to provide a procedure pursuant to the authority granted the City Council in Sections 40200 and 40203.5 of the California Vehicle Code for the establishment of a schedule of parking penalties for parking and related violations, late payment penalties, administrative fees, and other related charges for parking and related violations under the state of California Vehicle Code, the Elk Grove Municipal Code, or under any federal statute or regulation.

B. Procedure for Establishment. Subject to any limitations imposed by state law, the City Council shall by resolution establish penalties, fines, fees, and related charges for parking and related violations, late payment violations, administrative fees and any other charges related to the administration of the provisions of Section 40200 et seq. of the California Vehicle Code.

#### **10.04.110 Civil penalty provisions.**

Any person violating or failing to comply with the provisions of EGMC Sections 10.16.050(B); 10.24.010(A), (B), (C), (D) and (E); 10.24.030(A) and (B); 10.24.040; 10.24.050; 10.24.060; 10.24.070(A), (B), (C), (D), (G) and (H); 10.24.080; 10.24.090(D); 10.24.100; 10.24.110; 10.24.120; 10.24.130; 10.24.140; 10.24.160; 10.24.170(B); 10.24.175; 10.24.180; 10.28.030; 10.28.100; 10.28.110; 10.32.050; 10.32.060; and 10.36.020 shall be subject to civil penalties, fees, or charges, and procedures as set forth in the resolution adopted by the City Council pursuant to EGMC Section 10.04.100.

### **Chapter 10.08**

#### **DEFINITIONS**

##### Sections:

10.08.010 Words defined in chapter.

10.08.020 Words defined in Vehicle Code.

10.08.030 Alley.

10.08.050 Bus loading zone.

10.08.060 Commercial vehicle loading zone.

10.08.070 Director.

10.08.080 Holidays.

10.08.100 Park.

10.08.110 Parkway.

10.08.120 Passenger loading zone.

10.08.130 Taxi stands.

10.08.140 Vehicle Code.

**10.08.010 Words defined in chapter.**

Whenever in this title the words or phrases hereinafter defined are used, they shall have the meanings respectively ascribed to them in this chapter unless the context indicates to the contrary.

**10.08.020 Words defined in Vehicle Code.**

Whenever any words or phrases used in this title are not defined herein, but are now defined in the Vehicle Code, such definitions as now existing are incorporated herein and shall be deemed to apply to such words and phrases as used in this title as though set forth here in full.

**10.08.030 Alley.**

“Alley” means any highway as herein defined, unnamed, and having a width of twenty (20’ 0”) feet or less.

**10.08.050 Bus loading zone.**

“Bus loading zone” means the space adjacent to the curb or edge of a roadway reserved for the exclusive use of buses during the loading or unloading of passengers.

**10.08.060 Commercial vehicle loading zone.**

“Commercial vehicle loading zone” means that space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers and materials marked and designated as hereinafter provided.

**10.08.070 Director.**

“Director” means the Public Works Director of the Public Works Department of the City of Elk Grove or his or her authorized representative.

**10.08.080 Holidays.**

For the purposes of this title, holidays shall be those days designated as legal holidays by the Government Code.

**10.08.100 Park.**

“Park” means to stop or allow to stand any vehicle, whether occupied or not, otherwise than in obedience to official traffic control devices or by direction of a Police Officer.

**10.08.110 Parkway.**

“Parkway” means those portions of a highway other than a roadway or a sidewalk, whether improved or unimproved, primarily intended to serve as the dividing strip between opposing traffic lanes, or between sidewalks and curbs.

**10.08.120 Passenger loading zone.**

“Passenger loading zone” means that space adjacent to a curb reserved for the exclusive use of vehicles during loading and unloading of passengers marked and designated as hereinafter provided.

**10.08.130 Taxi stands.**

“Taxi stands” means that space adjacent to a curb reserved for the exclusive use of taxicab vehicles licensed to operate by transporting people for hire.

**10.08.140 Vehicle Code.**

“Vehicle Code” means the Vehicle Code of the state.

**Chapter 10.12**

**ENFORCEMENT**

Sections:

10.12.010 Persons riding bicycles or animals.

10.12.020 Persons directing traffic restricted.

10.12.030 Authority of flagmen to direct traffic.

10.12.040 Exemptions.

10.12.050 Signs required.

10.12.060 Obedience to official traffic control devices.

**10.12.010 Persons riding bicycles or animals.**

A. Every person riding a bicycle or riding or driving an animal upon a highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this title, except those provisions which by their very nature can have no application.

B. Notwithstanding the provisions of subsection (A) of this section, any person may ride a bicycle on a sidewalk which is designated by the Director as a part of the City bike route system and which is identified for such use by appropriate signs giving notice thereof. A bicyclist using a sidewalk as authorized by this subsection shall yield the right-of-way to any pedestrian using the sidewalk.

**10.12.020 Persons directing traffic restricted.**

No persons other than traffic officers or persons authorized by law shall direct traffic by voice, hand or other signal, except that a person may operate, when and/or as herein provided, a pushbutton signal erected by the provisions of this title.

**10.12.030 Authority of flagmen to direct traffic.**

A person designated as a flagman by a contractor working on the City streets under a permit issued by the City or a City employee designated as a flagman by the Director or his or her representative, during construction or repair of, or in, streets, may direct traffic by use of hand signals or warning flags if the operation of special highway construction equipment, trucks, concrete mixers, mobile cranes or other construction equipment might interfere with the safe movement of traffic.

**10.12.040 Exemptions.**

The provisions of this title regulating the parking and standing of vehicles shall not apply to any vehicle of the Police or Fire Departments, any public or private ambulance or any public utility vehicle which is qualified as an authorized emergency vehicle, when such vehicle mentioned in this section operates in the manner specified in the Vehicle Code in response to emergency calls. The provisions of this title regulating parking or standing vehicles shall not apply to any vehicle belonging to the government or a public utility or its agent while necessarily in use on construction or repair work on or in the public right-of-way. The foregoing exemption shall not, however, protect the driver of any such vehicle from the consequences of his willful disregard of safety of others.

**10.12.050 Signs required.**

The provisions of this title where signs giving notice of the provision are required shall not be effective until such signs are actually placed by the Director.

**10.12.060 Obedience to official traffic control devices.**

Every person driving a vehicle and every pedestrian shall comply with and obey any indication as set forth in the Vehicle Code presented by any official traffic control device upon any highway placed under the authority of this title.

## **Chapter 10.16**

### **SIGNS AND SIGNALS**

#### Sections:

- 10.16.010 Authority to install.
- 10.16.020 Traffic signals.
- 10.16.030 Roadway markings.
- 10.16.040 Hours of operation.
- 10.16.050 Parking space markings.
- 10.16.060 Turning markers.
- 10.16.070 Restrictive turn signs.
- 10.16.080 Stop at “through street” or “stop” signs.
- 10.16.090 Yield signs.
- 10.16.100 Stop or yield signs removed.
- 10.16.110 Closing streets to vehicular traffic.
- 10.16.120 Temporary suspension of markings.
- 10.16.130 Temporary suspension of weight limits.
- 10.16.140 Obedience to traffic signs.
- 10.16.150 Removal of traffic controls.
- 10.16.160 Removal of unauthorized signs, signals and lights.
- 10.16.170 Regulation of speed by traffic signals.
- 10.16.180 Bicycles on sidewalks.

#### **10.16.010 Authority to install.**

The Director is authorized to place and maintain, or cause to be placed and maintained, official traffic control devices when they are required or authorized by federal, state, or local warrants or ordinances or resolutions of this City. No provisions of the Vehicle Code or this chapter for which signs or markings are required shall be enforced against



an alleged violator unless appropriate signs or markings are in place giving notice of such provisions.

#### **10.16.020 Traffic signals.**

The Director is authorized to install and maintain official traffic signals at those intersections and at other places where conditions are such as to require that the flow of traffic be alternatively interrupted and released in order to prevent or relieve traffic congestion, or to protect life or property from exceptional hazard in accordance with engineering studies.

#### **10.16.030 Roadway markings.**

A. The Director is authorized to place and maintain distinctive roadway markings as described in the Vehicle Code on those highways, or parts of highways, where the volume of traffic or the vertical or other curvature of such roadway renders it hazardous to drive on the left side of such markings or signs and markings.

B. The Director is authorized to mark centerlines and lane lines upon the surface of the roadway to indicate the course to be traveled by vehicles, and may place signs temporarily indicating lanes to be used by traffic moving in a particular direction, regardless of the centerline of the highway.

#### **10.16.040 Hours of operation.**

The Director is authorized to determine the hours in which any traffic control device shall be in operation or be in effect except in cases where such hours or days are specified by ordinance or resolution.

#### **10.16.050 Parking space markings.**

A. The Director is authorized to install and maintain parking space markings to indicate parking space adjacent to curb where authorized parking is permitted.

B. When such parking space markings are placed in the highway, subject to other and more restrictive limitations, no vehicle shall be stopped or left standing other than within a single space unless the size or shape of such vehicle makes compliance impossible.

#### **10.16.060 Turning markers.**

A. The Director is authorized to allocate and indicate more than one lane of traffic from which the driver of vehicles may make right and/or left hand turns, and the course to be traveled as so indicated may conform to or be other than as prescribed by statute or ordinance. The Director shall place markers, buttons or signs within or adjacent to

intersections, indicating the course to be traveled by vehicles turning at such intersections.

B. When authorized markers, buttons or other indications are so placed within or adjacent to an intersection, indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications.

**10.16.070 Restrictive turn signs.**

A. The Director is authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U turn and those intersections controlled by official traffic control signals where drivers of vehicles may make U turns. The making of such turns may be prohibited between certain hours of any day and permitted at other hours. The Director shall place proper signs at such intersections to indicate the restrictions in force. The signs shall plainly indicate the restrictions in force and the hours in which they are in force, or the signs may be removed when such turns are permitted.

B. The Director is authorized to determine those intersections at which drivers of vehicles shall not make a right or left turn against a "stop" or "red" signal, and shall erect proper signs giving notice of the prohibition.

C. The Director is authorized to establish special traffic islands or roadways at intersections where the driver of a vehicle is required to make a left or right turn. The Director shall place markers, buttons or signs within or adjacent to the roadway indicating the course to be traveled by vehicles turning at the intersection.

D. Whenever authorized signs are erected indicating that right, left or U turns are prohibited or are prohibited during certain hours, no driver of a vehicle shall disobey such signs.

**10.16.080 Stop at "through street" or "stop" signs.**

A. The Director is authorized to designate certain highways to be "through" streets and certain intersections to be "stop" intersections and any railway grade crossing to be a "stop" intersection.

B. The Director shall erect and maintain "stop" signs as provided in the Vehicle Code whenever he designates and describes any street or portion thereof as a "through" highway, or any intersection at which vehicles are required to stop, at one or more entrances thereto, or any railroad grade crossing at which vehicles are required to stop.

#### **10.16.090 Yield signs.**

A. The Director is authorized to designate any intersection to be controlled by “yield right-of-way signs.”

B. The Director shall erect and maintain “yield right-of-way signs” as described in the Vehicle Code at such intersections he designates to be controlled by “yield right-of-way signs.”

#### **10.16.100 Stop or yield signs removed.**

The Director is authorized to remove stop signs and yield signs on any highway where the volume of traffic or other engineering study shows that the conditions which require such control no longer exist or where the signs are in conflict with this title notwithstanding any previous resolutions authorizing the signs.

#### **10.16.110 Closing streets to vehicular traffic.**

A. Whenever the Director finds that any portion of any highway is no longer needed for vehicular traffic, either permanently or at certain times during the day, or as an emergency measure, he shall place or cause to be placed appropriate signs or barricades, or both, specifying that such portion of the highway is closed to vehicular traffic at such times, or permanently, as the case may be, pursuant to the provisions of paragraph (b) of Section 21101 of the Vehicle Code. All signs giving notice of such closing shall conform to provisions of the Vehicle Code.

B. A person shall not operate any vehicle on any portion of the highway closed to traffic pursuant to this section.

C. The Director is hereby authorized to prohibit or restrict the use of any highway or portion of any highway by bicycles or other nonmotorized traffic or by any person operating a motor-driven cycle or motorcycle when that highway or that portion of highway has been designated as a riding or hiking trail by the City Council or the Director. The Director shall erect appropriate signs giving notice thereof upon the highway or riding and hiking trail and approaches thereto. The Director shall determine the location of appropriate signs. It is unlawful for any persons to violate any prohibition or restriction which is established as provided in this subsection.

#### **10.16.120 Temporary suspension of markings.**

Whenever, because of the construction, alteration, repair, or improvement of any highway or temporary detours or because of other emergency compliance with any provision of this title, including a provision pursuant to any action of the Council pursuant to this title, a traffic hazard will be created and the Director so finds, he shall

either remove or cover up any sign or other traffic marking which informs persons of such provision. While such sign or other marking is removed or covered the effect of such provision is suspended. At the end of such emergency, unless otherwise determined by the Council, the Director shall replace or uncover such sign or other markings.

#### **10.16.130 Temporary suspension of weight limits.**

If a weight limit is suspended pursuant to EGMC Section 10.16.120 and a different weight limit is necessary, the Director shall erect and maintain during the emergency appropriate signs. At the end of the emergency the Director shall remove such temporary signs and uncover and restore the original signs unless the Council otherwise determines.

#### **10.16.140 Obedience to traffic signs.**

Every operator and every pedestrian shall comply with and obey every instruction appearing on any traffic sign or other marking which sign or marking has been erected or placed by authority of the Council or Director of this title.

#### **10.16.150 Removal of traffic controls.**

The Director is authorized to remove, relocate or discontinue the operation of any traffic control device or curb marking not specifically authorized by state law or ordinance, whenever engineering studies show that the conditions which warrant or require such control no longer exist or where such device is in conflict with the provisions of this title.

#### **10.16.160 Removal of unauthorized signs, signals and lights.**

The Director shall remove every unofficial sign, signal or device which purports to be or is an imitation of or resembles an official traffic sign or signal, or which attempts to direct the movement of traffic, or which hides from view any official traffic sign or signal, or which in any other respect violates the provisions of Sections 21465 and 21466 of the Vehicle Code.

#### **10.16.170 Regulation of speed by traffic signals.**

The Director is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner, at speeds at variance from the speeds otherwise applicable within the district or at intersections, and may erect appropriate signs giving notice thereof.

### **10.16.180 Bicycles on sidewalks.**

The Director is authorized to designate sidewalks which may be used by bicyclists as a part of the City bike route system and shall identify such sidewalks with appropriate signs giving notice thereof.

## **Chapter 10.20**

### **PEDESTRIANS AND CROSSWALKS**

Sections:

10.20.010 Crosswalks established.

10.20.020 Safety zones.

10.20.030 Pedestrians prohibited when.

10.20.040 Crossing at right angles.

10.20.050 Standing in roadway.

#### **10.20.010 Crosswalks established.**

A. The Director is authorized to determine the location of midblock crosswalks, maintain such crosswalks and designate them by appropriate devices or painted marks or signs upon the surface of the roadway.

B. The Director may maintain such other crosswalks and designate them by appropriate devices, painted marks or signs upon the surface of the roadway.

#### **10.20.020 Safety zones.**

The Director is authorized to install and maintain safety zones at all locations where there is particular danger to pedestrians and may locate and designate the same upon the surface of the roadway by appropriate devices, signs, or marks.

#### **10.20.030 Pedestrians prohibited when.**

A. The Director may determine when any crosswalk shall not be used by pedestrians and upon making such determination shall cause to be placed and maintained appropriate official traffic control devices. No person shall thereafter walk in any such crosswalk unless indicated otherwise.

B. The Director may determine when any part of a roadway between intersections shall not be crossed by pedestrians and upon making such determination shall cause to be placed and maintained appropriate official traffic control devices. No person shall thereafter cross any part of such roadway, unless indicated otherwise.

C. No person shall stand on any sidewalk in such a manner as to hinder or impede the movement of other pedestrian traffic. No person shall remain on any bridge or overcrossing or approaches thereto which is reserved exclusively for pedestrians for a period longer than necessary to walk across the bridge or overcrossing.

**10.20.040 Crossing at right angles.**

No pedestrian shall cross a roadway at any place other than by a route at a right angle to the curb or by the shortest route to the opposite curb except in a marked crosswalk.

**10.20.050 Standing in roadway.**

No person shall stand in any roadway other than a safety zone or in a crosswalk if such action interferes with the lawful movement of traffic. This section shall not apply to any public officer, construction worker or employee of a public utility or its agent when necessarily upon a street in line of duty.

**Chapter 10.24**

**PARKING REGULATIONS**

Sections:

10.24.010 Signs and curb markings.

10.24.020 Application of regulations.

10.24.030 No-parking zones.

10.24.040 Parking on narrow streets and at special places.

10.24.050 Emergency parking signs.

10.24.060 Alleys – Parkways.

10.24.070 Parking prohibited when.

10.24.075 Prohibition of parking specified vehicles in the public right-of-way.

10.24.080 One-way streets.

10.24.090 Loading zones.

10.24.100 Limited-time parking.

10.24.110 Continuing violations – Additional offenses.

10.24.120 Curb parking – Right-of-way.

10.24.130 Parking in intersections.

10.24.140 Angle parking.

10.24.150 Removal of illegally parked vehicles.

10.24.160 Removal of ignition key when parking.

10.24.170 Parking on City property.

10.24.175 Parking in City parking areas.

10.24.180 Parking on private property.

**10.24.010 Signs and curb markings.**

The Director is authorized, subject to the provisions and limitations of this title, to place and maintain and, when required herein, shall place, the following curb markings or signs to indicate parking, standing or stopping regulations, and the curb markings or signs shall have the meanings as herein set forth.

A. Red curb marking means no stopping, standing or parking at any time of any day except as permitted by the Vehicle Code;

B. Yellow curb marking means no stopping, standing or parking between 7:00 a.m. and 6:00 p.m. of any day except holidays and Sundays for any purpose other than the loading or unloading of passengers or materials; provided, that the loading or unloading of passengers shall not consume more than one (1) minute, nor the unloading of materials more than twenty (20) minutes and such loading or unloading shall be actively carried on during all of that time;

C. White curb marking means no stopping, standing or parking at any time of any day for any purpose other than loading or unloading of passengers and baggage, and shall not exceed five minutes;

D. Green curb marking means no stopping, standing or parking for a period of time longer than twelve (12) or twenty-four (24) minutes, as designated by signs at any time between 7:00 a.m. and 6:00 p.m. of any day except holidays and Sundays;

E. Blue curb marking means parking limited exclusively to public agency-owned vehicles specifically used for transportation of physically handicapped persons and for vehicles of physically handicapped persons which vehicle bears an appropriate identification identifying the vehicle as that of a physically handicapped person.

#### **10.24.020 Application of regulations.**

The provisions of this title imposing regulations on stopping or parking shall not relieve any person from the compliance with other or more restrictive provisions of the Vehicle Code, or the ordinances of this City regulating the standing or parking of vehicles at specified places or at specified times.

#### **10.24.030 No-parking zones.**

A. The Director is authorized to prohibit stopping, standing or parking on any highway or may prohibit stopping, standing or parking during certain hours of the day on any highway.

B. When signs authorized by provisions of this section are in place, giving notice of the provisions thereof, no person shall stop, stand or park any vehicle contrary to the directions and provisions of such signs.

#### **10.24.040 Parking on narrow streets and at special places.**

A. The Director is authorized to place signs and marking indicating no parking upon any two-way roadway, when the width of the roadway does not exceed thirty (30' 0") feet.

B. The Director is authorized to sign or mark the following places and, when so signed or marked, no person shall stop, stand or park a vehicle in any of the places:

1. At any place within twenty (20' 0") feet of a point on the curb immediately opposite a midblock end of a safety zone;

2. At any place within twenty (20' 0") feet of any crosswalk;

3. Within twenty (20' 0") feet of the approach to any traffic signal, boulevard stop sign, or official electric flashing device;

4. At any place where traffic and engineering studies have been made and the Director determines that it is necessary in order to eliminate dangerous traffic hazards or to provide for the orderly movement of traffic.



C. When signs authorized by provisions of this section are in place, giving notice of the provisions thereof, no person shall stop, stand or park any vehicle contrary to the directions and provisions of such signs.

**10.24.050 Emergency parking signs.**

A. Whenever the Director shall determine that, in a special situation, traffic congestion is likely to result on any highway or alley from holding public or private assemblages, gatherings or functions, street construction, maintenance or repair work, or for any other reason, he is authorized to order temporary signs to be erected or posted indicating that the operation, parking or standing of vehicles is prohibited on such streets and alleys. The signs shall remain in place only during the existence of the special situation, and the Director shall cause the signs to be moved promptly thereafter.

B. When signs authorized by provisions of this section are in place, giving notice of the provisions thereof, no person shall stop, stand or park any vehicle contrary to the directions and provisions of such signs.

**10.24.060 Alleys – Parkways.**

A. No person shall park any vehicle in any alley in the City except while actively engaged in loading or unloading passengers, freight or merchandise.

B. No person shall stop, stand or park a vehicle within any parkway.

**10.24.070 Parking prohibited when.**

A. No person shall park a vehicle upon any roadway for the principal purpose of displaying such vehicle for sale.

B. No person who owns or has custody or control of any vehicle shall park or store such vehicle upon any highway or alley for more than a consecutive period of seventy-two (72) hours, or move and repark such vehicle on any highway within three hundred (300' 0") feet of the original parking site, unless such vehicle is maintained in an operable condition and driven within the seventy-two (72) consecutive hours mentioned above.

C. In the event the highway includes two (2) or more separate roadways and traffic is restricted to one direction upon each roadway, no person shall stop, stand or park a vehicle upon the left-hand side of such one-way roadways.

D. It is unlawful for any person to have, erect, place, stand or park, wholly or partly within the right-of-way of any City road or highway, any vehicle, motor vehicle, trailer, semitrailer, wagon, pushcart, stand, structure, or building for the purpose of selling the same or of selling, vending, displaying for sale, or offering for sale, therefrom or therein,

any goods, wares, or merchandise, fruit, vegetables, produce, or any other article or thing of value.

E. Any such vehicle, motor vehicle, trailer, semitrailer, wagon, pushcart, stand, structure, or building so had, erected, placed, stood or parked for any such purpose or purposes is hereby declared to be a public nuisance and the removal thereof forthwith from within the right-of-way of any such road or highway by the Director, his or her engineers or employees is hereby authorized.

F. This title does not prohibit a seller from taking orders or delivering any commodity from any vehicle from that City road or highway immediately adjacent to the premises of the purchaser.

G. It is unlawful for any person to park, stop or abandon any vehicle within one thousand (1,000' 0") feet of any authorized emergency vehicle when such authorized emergency vehicle is actively engaged at the scene of any bombing, act of sabotage, accident, explosion, flood, riot, earthquake, fire or any emergency.

H. No person shall park any motor truck (excepting therefrom any truck commonly known as and referred to as a "pickup truck"), trailer other than a camping trailer or boat trailer, semitrailer, truck tractor or commercial vehicle for more than one (1) hour on any highway in a residential district or move and repark such vehicle on any highway in a residential district within three hundred (300' 0") feet of the original parking site within any twenty-four (24) hour period except while loading or unloading property or in connection with and in the aid of the performance of a service to or on a property adjacent to the block in which such vehicle is parked and only for such time in addition to one (1) hour that is reasonably necessary to complete such loading, unloading or service.

I. No person shall park any motor home, trailer coach, travel trailer, truck camper, camping trailer or boat trailer for more than seventy-two (72) hours on any highway in a residential district or move and repark such vehicle on any highway in a residential district within three hundred (300' 0") feet of the original parking site within any seventy-two (72) hour period.

#### **10.24.075 Prohibition of parking specified vehicles in the public right-of-way.**

A. No person who owns or has custody or control of any commercial or recreational vehicle shall park or store such vehicle on any public street, highway or right-of-way within the City limits of the City of Elk Grove that is not within a designated industrial zone (M-1 and M-2 classification), or other areas specifically posted to permit parking or unless otherwise authorized by EGMC Section 10.24.070(H) or (I).

B. "Commercial or recreational vehicle" includes, but is not limited to, all motorized and nonmotorized tractors, trailers, semi-trailers, vans, trucks, open bed or flatbed pickups, mobile equipment, machinery, motor homes, campers, or other vehicles which meet one (1) or more of the following criteria:

1. Vehicle or load height exceeds seven (7' 0") feet; or
2. Vehicle or load width exceeds seven and one-half (7' 6") feet, as measured from the widest portion of the vehicle or load, but not including mirrors; or
3. Vehicle or load length exceeds twenty (20' 0") feet (in combination with any attached trailers); or
4. Manufacturer's gross vehicle weight rating exceeds ten thousand (10,000 lbs) pounds; or
5. Any nonmotorized vehicle regardless of its height, width, length or weight when it has been detached from a motor vehicle that is capable of towing such vehicle.

C. This section shall not prohibit the parking of commercial vehicles if they are at the time engaged in any of the following activities:

1. Loading or unloading of persons and/or property; or
2. Parked in connection with or in the aid of the immediate performance of a service to or on a property in the immediate proximity in which such vehicle is parked; or
3. Parked or left standing to allow the operator respite in the immediate proximity in which such vehicle is parked for a period of not to exceed thirty (30) minutes; or
4. Parked or left standing as a result of a mechanical breakdown so as to allow for the performance of emergency repairs on the vehicle, or while waiting for a tow operator for a period not to exceed two (2) hours; or
5. Parked or left standing as allowed by a permit issued by the City pursuant to established procedures; or
6. Emergency vehicles of any political subdivision of the state of California or of a public utility, while the driver of any such vehicle is engaged in the necessary performance of public emergency duties; or
7. Parking of motor homes, trailer coaches, recreational trailers, truck campers, camping trailers, or boat trailers designed for personal use for less than seventy-two (72) hours in a residential district.

D. The traffic engineer shall place appropriate signs on all streets, roads or highways, as the traffic engineer may determine will best serve to give notice of this section, indicating the affected residential and commercial streets, roads or highways where commercial vehicle parking is prohibited.

E. Any person violating any of the provisions of this section or any rule or regulation established under the provisions of this section is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**10.24.080 One-way streets.\***

Subject to other and more restrictive limitations, a vehicle may be stopped or parked parallel to and within eighteen (18") inches of the left-hand curb, facing in the direction of the traffic movement upon any one-way street, unless signs are in place prohibiting such stopping or standing.

\* See also EGMC Chapter 10.44.

**10.24.090 Loading zones.**

A. The Director is authorized to establish bus zones opposite red curb space for the loading and unloading of buses, common carriers of passengers and to determine the location and length thereof.

B. The Director is authorized to establish loading zones.

C. The Director is authorized to establish taxi stands.

D. No person shall park and leave standing any vehicle whether attended or unattended in any loading zone for a period of time longer than is permitted for such loading zone except as otherwise provided in this title or in a taxi stand except the operator of the taxi.

**10.24.100 Limited-time parking.**

A. The Director is authorized to restrict or prohibit parking in excess of twelve (12) minutes, twenty-four (24) minutes, one (1) hour or two (2) hours, between 7:00 a.m. and 6:00 p.m. of any day on any highway.

B. When signs have been posted to give notice of such restriction or prohibition, no person shall park any vehicle and leave the same parked, whether attended or unattended, for a period of time longer than set out on the signs.

#### **10.24.110 Continuing violations – Additional offenses.**

Every person violating the provisions of EGMC Section 10.24.090 is guilty of a separate and further violation for each period of time that the vehicle is left so parked, equal to the maximum legal parking time for the particular time zone or parking space as designated in EGMC Section 10.24.090, or by ordinance adopted setting the maximum legal time.

#### **10.24.120 Curb parking – Right-of-way.**

For the purpose of this section a curb parking space shall be an area open for lawful parking alongside or adjacent to a curb, which area is not of sufficient length to permit two (2) or more vehicles to freely move for parking therein at the same time. Any person seeking to park his vehicle in a curb space, whose vehicle arrives at the parking space prior to any vehicle, other than his, and who proceeds beyond the space a distance not to exceed ten (10' 0") feet, measured at the rear bumper, for the purpose of backing his vehicle therein, shall have the right-of-way over any person driving, or attempting to drive, any other vehicle directly into such curb parking space, or who, in any manner, obstructs such curb parking space; and driver of such other vehicle shall yield the right-of-way to the driver first arrived at the parking space.

#### **10.24.130 Parking in intersections.**

A person may park a vehicle adjacent to the curb within an intersection if the Director marks the roadway with appropriate signs, markers or buttons as described in EGMC Section 10.16.050.

#### **10.24.140 Angle parking.**

At no time shall any person park a vehicle on a highway at an angle to the roadway except to comply with the directions of a traffic officer.

#### **10.24.150 Removal of illegally parked vehicles.**

If any person parks a vehicle contrary to the provisions of EGMC Sections 10.24.030 through 10.24.070, 10.24.100 and 10.24.120, the vehicle is determined to be an obstruction to the normal flow of traffic as defined in Section 22651(b) of the Vehicle Code and may be removed from the highway as provided in Chapter 10 of the Vehicle Code.

#### **10.24.160 Removal of ignition key when parking.**

Every person who parks a motor vehicle upon any highway shall first lock the ignition, remove the key therefrom and take such key with him unless a licensed operator

remains in such motor vehicle, in which case such licensed operator, before leaving the vehicle, shall first lock the ignition, remove the key therefrom, and take the key with him.

**10.24.170 Parking on City property.**

A. Whenever the Director determines that parking or standing of vehicles on City property is prohibited, limited or restricted, the Director shall have the power and authority to order signs to be erected or posted indicating that the parking of vehicles is thus prohibited, limited or restricted.

B. When signs authorized by the provisions of this section are in place, giving notice thereof, no person shall park or stand a vehicle contrary to the directions of the signs, and any vehicle parked in violation of the signs may be towed to the public storage garage at the expense of the owner of the vehicle as provided in Division 11, Chapter 10 of the Vehicle Code.

**10.24.175 Parking in City parking areas.**

Notwithstanding any other provision in this code, whenever the Director determines that parking or standing of vehicles in City parking areas under his or her jurisdiction is prohibited, limited or restricted, the Director shall have the power and authority to order signs to be erected or posted indicating that the parking of vehicles is thus prohibited, limited or restricted.

When signs authorized by the provisions of this section are in place giving notice thereof, no person shall park or stand a vehicle contrary to the directions of the signs, and any vehicle parked in violation of the signs may be towed to the public storage garage at the expense of the owner of the vehicle as provided in Division 11, Chapter 10 of the Vehicle Code, and/or Director or those City employees may designate, or a peace officer may issue a citation for illegal parking. The Director, his or her designee or a peace officer shall record on the citation the location the offense was committed, the nature of the violation, the state vehicle license number of the vehicle, the make and year of the vehicle and the time and date of such violation. He or she shall then issue in writing a citation for illegal parking in the same form and subject to the same procedure provided for by the laws of the state applicable to the traffic violations within the City.

**10.24.180 Parking on private property.**

It is unlawful for any person to drive upon or across, to leave standing or cause to be left standing any vehicle upon any privately owned property within the City without the implied or express consent of the owner or person in lawful possession of the property.

## **Chapter 10.28**

### **PARKING METERS**

#### Sections:

- 10.28.020 Installation authority.
- 10.28.030 Parking space markings.
- 10.28.040 Installation at parking spaces.
- 10.28.050 Maximum time limits.
- 10.28.060 Specifications.
- 10.28.070 Rates.
- 10.28.080 Hours of operation.
- 10.28.090 Operation of meters – Occupation of spaces.
- 10.28.100 Overtime parking.
- 10.28.110 Extending parking time over maximum.
- 10.28.115 Continuing violations – Additional offenses.
- 10.28.120 Defacing or destroying meters.
- 10.28.130 Citations.
- 10.28.140 Use of funds.
- 10.28.150 Penalty.

#### **10.28.020 Installation authority.**

The Director is authorized to install, or cause to be installed, parking meters in all parking meter zones established by this title or hereafter created by the City Council in such numbers and in such places as, in his judgment, may be necessary for the regulation, control and inspection of the parking of vehicles therein.

**10.28.030 Parking space markings.**

A. The Director is authorized to install and maintain parking space markings to indicate parking space adjacent to curbs where authorized parking is permitted and in parking lots especially designated therefor.

B. When such parking space markings are placed in the highway, subject to other and more restrictive limitations, no vehicle shall be stopped or left standing other than within a single space unless the size or shape of such vehicle makes compliance impossible.

**10.28.040 Installation at parking spaces.**

The Director is authorized to install and maintain between the sidewalk and the street immediately adjacent to each street parking space and at a convenient location with respect to each parking lot parking space, a parking meter for the purpose of regulating the parking within each parking space so marked.

**10.28.050 Maximum time limits.**

The maximum parking time limits within designated portions of the parking meter zones shall be as provided by this title and shown by proper signs erected and maintained.

**10.28.060 Specifications.**

Each parking meter shall be so set as to display a signal showing legal parking upon the deposit of the appropriate coin or coins, lawful money of the United States, for the period of time prescribed by this chapter.

Each parking meter shall be so arranged that upon the expiration of the lawful time limit it will indicate by a proper visible signal that the lawful parking period has expired and in such cases the right of such vehicle to occupy such space shall cease.

**10.28.070 Rates.**

Parking or standing a vehicle in a designated street parking space, or in a designated parking lot space, in a parking meter zone is lawful for eighty (80) minutes upon the deposit of Zero and 25/100<sup>ths</sup> (\$0.25) Dollars for each twenty (20) minutes of time.

**10.28.080 Hours of operation.**

Parking meters shall be operated in the parking meter zone at all hours of every day.

**10.28.090 Operation of meters – Occupation of spaces.**

When any vehicle is parked in any space alongside of or near to the place where a parking meter is located, the operator of the vehicle shall immediately, after entering the



parking meter space, deposit or cause to be deposited in such meter such proper coin of the United States as is required by EGMC Section 10.28.070 for such parking meter and as is designated by proper directions on the meter, and when required by the directions on the meter, the operator of such vehicle, after the deposit of the proper coin, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. Failure to deposit the proper coin and to set the timing mechanism in operation when so required constitutes a violation of this chapter.

Upon the deposit of the coin and the setting of the timing mechanism in operation when so required, the parking space may be lawfully occupied by such vehicle during the period of time which has been prescribed for the part of the street in which the parking space is located; provided, that any persons placing a vehicle in a parking meter space adjacent to a meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as his occupancy of the space does not exceed the indicated unused parking time.

#### **10.28.100 Overtime parking.**

No person shall cause, allow, permit or suffer any motor vehicle registered in the name of or operated by such person to be parked overtime or beyond the period of legal parking time established for any parking meter zone; nor shall any person cause, allow, permit or suffer any motor vehicle registered in the name of or operated by such person to remain in any space opposite of which there is a parking meter when such parking meter displays a signal indicating illegal use of the space.

The display of a signal showing illegal parking on any parking meter while a motor vehicle is parked in a space adjoining the parking meter shall be *prima facie* evidence that the motor vehicle has been parked overtime and beyond the parking period of time.

#### **10.28.110 Extending parking time over maximum.**

No person shall cause, allow, permit or suffer to be deposited in a parking meter coins for the purpose of extending the parking time of such vehicle beyond the maximum time allowed for parking as designated by the posted signs.

#### **10.28.115 Continuing violations – Additional offenses.**

Every person violating the provisions of EGMC Sections 10.28.100 and 10.28.110 is guilty of a separate and further violation for each additional period of time that the vehicle is so parked, equal to the maximum legal parking time for the particular meter. Each complete time period, plus any remaining fraction of said time period, shall constitute a separate violation.

#### **10.28.120 Defacing or destroying meters.**

No person shall deface, injure, tamper with, open or wilfully break, destroy or impair the usefulness of any parking meter installed under the provisions of this chapter.

#### **10.28.130 Citations.**

A peace officer, or any City employee acting under the direction and control of the Chief of Police, may issue a citation for overtime parking at a meter. The person issuing the citation shall take the number of any meter at which the vehicle is overparked, as provided in this chapter, the state vehicle license and registration expiration date of the vehicle, the time and date of such overparking, the color, and, if possible, the make of the vehicle. The person shall then issue, in writing, a citation for overtime parking in the same form and subject to the same procedure provided by the laws of the state applicable to traffic violations within the City.

#### **10.28.140 Use of funds.**

The money required to be deposited in parking meters as provided in this chapter is hereby levied and assessed as fees to provide for the proper regulation and control of traffic and to cover the cost of the supervision, inspection, installation, maintenance, control and use of the parking meter zones.

#### **10.28.150 Penalty.**

Violation of any of the provisions of this chapter shall be an infraction punishable by fine as provided for by the laws of the state and Chapter 1.04 of this Code

### **Chapter 10.32**

#### **MISCELLANEOUS DRIVING RULES**

Sections:

10.32.010 Prohibited acts.

10.32.020 Parade permit required.

10.32.030 Bus stop in front of driveway.

10.32.040 Molesting of traffic-counting devices prohibited.

10.32.050 Washing vehicles on highway.

10.32.060 Repairing vehicles on highways.

10.32.070 Railway gates.

10.32.080 Trains not to block crossings.

**10.32.010 Prohibited acts.**

No person shall drive any vehicle or animal, or do any act, in violation of the following:

- A. Drive through vehicles comprising a funeral procession while they are in motion and when the vehicles in such a procession are specifically designated;
- B. No person riding any bicycle, motorcycle, coaster, roller skates, or any toys or toy vehicles, shall attach the same or himself to any moving vehicle, upon any roadway, and no person driving any vehicle shall permit the same to be done;
- C. Drive within or over any sidewalk area or any parkway except at a driveway;
- D. Drive over or across any new pavement or freshly painted marking, when any street barrier, sign or marking is in place warning persons not to drive over or across the same, or when a sign is in place stating that the street, or any portion thereof, is closed;
- E. Drive or operate a vehicle contrary to the directions or provisions of any barrier or sign erected pursuant to the provisions of any ordinance of the City or by any other utility, or by any department of the City or by any public person pursuant to law or contract with the City and no unauthorized person shall move or alter the position of any such barrier or sign;
- F. Drive a vehicle onto or from any freeway except at such entrances and exits as are established by public authority;
- G. Drive a vehicle into an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians in such intersection or crosswalks, notwithstanding any official traffic control device or signal indication to proceed;
- H. No tire on any vehicle upon any City street or highway shall have on its periphery any block, stud, flange, cleat, ridge, bead, or any other protuberance or metal or wood which projects beyond the tread of the traction surface of the tire.

This subsection does not apply to the following:

1. Tire chains of reasonable size used to prevent skidding when upon wet surfaces or when upon ice or snow.

2. Pneumatic tires which have embedded therein wire not to exceed Zero and 75/1000<sup>ths</sup> (0.075") inches in diameter and which are so constructed that under no conditions will the percentage of metal in contact with the roadway exceed five percent of the total tire area in contact with the roadway, except that during the first one thousand (1,000) miles of use or operation of any such tire, the metal in contact with the roadway may exceed five (5%) percent of the tire area in contact with the roadway, but shall in no event exceed twenty (20%) percent of such area.

3. Vehicles operated upon unimproved roadways when necessary in the construction or repair of highways.

4. Traction engines or tractors when operated under the conditions of a permit first obtained from the City of Elk Grove Public Works Department.

**10.32.020 Parade permit required.**

No person shall operate a vehicle, or join in, or be a member of any procession, parade or assemblage on any public highway without a permit first having been issued by the Director. No permit shall be valid on an arterial or through highway during the hours of 4:00 p.m. to 6:00 p.m. or during the hours of darkness or between the 10th of December and the 26th of December in any year.

**10.32.030 Bus stop in front of driveway.**

A bus engaged as a common carrier may stop to load or unload passengers in front of a driveway. At no time shall the bus so stop for a period longer than is necessary to load or unload passengers.

**10.32.040 Molesting of traffic-counting devices prohibited.**

Unless authorized by the Director, a person shall not move, molest, tamper with, or damage in any way any traffic-counting device which has been located within a highway or adjacent thereto by authority of the Director.

**10.32.050 Washing vehicles on highway.**

A person shall not dust, wipe, wash or otherwise clean, use, or employ any method of dusting, wiping, washing or otherwise cleaning any vehicle or portion thereof while on any highway unless the vehicle is owned by or under the direct control or supervision, for purposes other than such wiping, washing, cleaning, or dusting, of the person doing any of the acts herein enumerated.

### **10.32.060 Repairing vehicles on highways.**

A person shall not repair, or make any repairs, or add or install any part or accessory to or on any vehicle while the same is upon any public highway or alley.

The provisions of this section do not prohibit the operator of any vehicle which is disabled while upon any public highway or alley to such extent that it is impossible to avoid stopping from making or causing to be made the repairs necessary to enable the vehicle to be removed from the public highway or alley.

### **10.32.070 Railway gates.**

No person shall drive any vehicle around, or under, any crossing gate or barrier at a railroad grade crossing while the gate or barrier is closed or is being opened or closed.

### **10.32.080 Trains not to block crossings.**

It is unlawful for any person to cause or permit any railway train or railway cars or similar vehicle on rails to operate or to be operated in such a manner as to prevent the use of any highway for the purpose of travel for a period of time longer than ten (10) minutes, except that this provision does not apply to railway trains, cars or similar vehicles on rails while blocking or obstructing a crossing because of an accident which requires the operator of a train, car or similar vehicle on rails to stop at or near the scene of the accident.

## **Chapter 10.36**

### **EMERGENCY VEHICLES**

Sections:

10.36.010 Definitions.

10.36.020 Obstruction unlawful.

10.36.030 Driving near when siren sounds.

10.36.040 Approaching scene of emergency.

10.36.050 Parking near scene of emergency.

10.36.060 Assembling near scene of emergency.

10.36.070 Exemptions.

10.36.080 Penalty for violation.

**10.36.010 Definitions.**

As used in this chapter, the following words and phrases have the meanings herein set forth:

“Authorized emergency vehicle” means all authorized emergency vehicles as defined in Division 1 of the Vehicle Code.

“Private road or driveway” means private roads or driveways as defined in Section 490 of the Vehicle Code.

“Public highway” means any highway, road, street, way or place of whatever nature open to the use of the public for purposes of vehicular travel.

“Vehicle” means a device in, upon or by which any person or property is or may be propelled, moved or drawn upon a public highway, including a bicycle or such other vehicle of propulsion moved by human power.

**10.36.020 Obstruction unlawful.**

It is unlawful for any person to operate, drive, stop or park any vehicle upon the public highways or any private road or driveway so as to interfere with or obstruct the operation of any authorized emergency vehicle.

**10.36.030 Driving near when siren sounds.**

It is unlawful for any person operating any vehicle upon the public highways or any private road or driveway to operate or drive any vehicle in the same direction that any authorized emergency vehicle is traveling while the emergency vehicle is giving audible signal by siren, and has at least one (1) lighted lamp exhibiting red light visible under normal atmospheric conditions, from a distance of five hundred (500' 0") feet to the front of such vehicle, until such authorized emergency vehicle shall be at least five hundred (500' 0") feet distant, and it is unlawful for any person to operate or drive any vehicle so as to approach within five hundred (500' 0") feet of such authorized emergency vehicle, giving audible signal by siren and having at least one (1) lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of five hundred (500' 0") feet to the front of such vehicle.

#### **10.36.040 Approaching scene of emergency.**

It is unlawful for any person to operate any vehicle upon the public highways or any private road or driveway so as to approach within one thousand (1,000' 0") feet of any authorized emergency vehicle when such authorized emergency vehicle is engaged in extinguishing fire or when the authorized emergency vehicle is actively engaged at the scene of any bombing, act of sabotage, accident, explosion, flood, riot, earthquake or any emergency.

#### **10.36.050 Parking near scene of emergency.**

It is unlawful for any person to park, stop or abandon any vehicle within one thousand (1,000' 0") feet of any authorized emergency vehicle when the authorized emergency vehicle is actively engaged at the scene of any bombing, act of sabotage, accident, explosion, flood, riot, earthquake or any emergency.

#### **10.36.060 Assembling near scene of emergency.**

It is unlawful for any person or persons to gather, collect, assemble or congregate within one thousand (1,000' 0") feet of the scene of any fire, bombing, act of sabotage, accident, explosion, flood, riot, earthquake or any emergency when any authorized emergency vehicle is actively engaged thereat.

#### **10.36.070 Exemptions.**

The provisions of this chapter do not apply to the following persons:

- A. All authorized emergency vehicles, as defined herein, and persons operating the same;
- B. Any person or persons lawfully ordered to do otherwise by any public officer or fireman.

#### **10.36.080 Penalty for violation.**

Any person who violates any provisions of this chapter is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **Chapter 10.40**

#### **TRUCK ROUTES**

Sections:

10.40.010 Establishing weight limits.

10.40.020 Exceptions.

10.40.030 Designation.

10.40.040 Locations of weight restrictions.

**10.40.010 Establishing weight limits.**

The Director is authorized to designate certain highways or parts thereof upon which the operation of commercial vehicles shall be prohibited as follows:

A. Whenever the Director finds that a highway is unimproved as the word “unimproved” is used in Section 35706 of the Vehicle Code and the nature of the pavement or surface is such that it will be injured if vehicles of over a certain gross weight are permitted to operate thereon, the Director shall erect signs specifying the weight which the Director finds should be prohibited;

B. Whenever the Director finds that the use of any street, road, or highway located in the City by any commercial vehicle exceeding a gross weight of fourteen thousand (14,000 lbs) pounds would not be in the best public interest or would be unsafe, and such street, road, or highway may be limited as to use in accordance with Section 35712 of the Vehicle Code, the Director shall erect appropriate signs;

C. Whenever any structure of a bridge on a highway on which no weight limit has been imposed is such that it is unsafe for the vehicles over a certain weight to use the bridge, and whenever the Director finds that the structure of a bridge on a highway on which a weight limit has been imposed is such that the use of vehicles over a certain weight which is less than the weight limit on such highway would be unsafe, the Director shall erect appropriate weight limit signs at both entrances to such bridges as provided in this title;

D. Wherever the Director finds that the use of any highway by a commercial vehicle exceeding a gross weight of three tons would not be in the best public interest or would be unsafe or would create undue hazards to local traffic, the Director may erect appropriate signs prohibiting commercial vehicles as provided in Section 21100 of the Vehicle Code;

E. The Director of Public Works may issue a permit for the operation of vehicles on City Roadways that are in excess of the maximum load or size as specified in the Vehicle Code. The permit shall specify the description of the vehicle and shall be subject to



such conditions as are deemed advisable in accordance with prevailing traffic conditions on the highway to be used;

F. When signs are in place giving notice of any of the provisions of this section, no person shall disobey the directions or provisions posted on the signs.

**10.40.020 Exceptions.**

Nothing in this chapter shall prohibit the operator of any vehicle exceeding the maximum gross weight of three (3) tons coming from a truck route having ingress and egress by direct route to and from a restricted street, when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on such restricted streets, or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted streets, for which a building permit has been previously obtained. The provisions of this chapter do not apply to a passenger bus under the jurisdiction of the Public Utilities Commission, or owned by a bus company licensed by the City, or to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility or any vehicle owned by the City while necessarily in use in the construction, installation or repair of a City utility or street.

**10.40.030 Designation.**

The Director is authorized to designate any roadway by appropriate signs as a truck route for the movement of vehicles exceeding a maximum gross weight limit of three (3) tons where in his opinion such designation is required.

**10.40.040 Locations of weight restrictions.**

Hampton Oaks Drive	7 tons
Grantline Road between Highway 99 and Wilton Road	7 tons
Mainline Drive between Waterman Road and Elk Grove Boulevard	7 tons
Mosher Road between Waterman Road and Grant Line Road	7 tons
Elk Grove Boulevard between Highway 99 and Grant Line Road	7 tons
Kammerer Road between Bruceville Road and Highway 99	7 tons

## **Chapter 10.41**

### **INTERSTATE TRUCK TERMINALS AND ACCESS ROUTES**

#### Sections:

10.41.010 Authority and application.

10.41.020 Fees and costs.

10.41.030 Reconstruction.

10.41.040 Revocation of route.

10.41.050 Prohibition.

#### **10.41.010 Authority and application.**

The Director is authorized to designate certain trucking terminals as interstate truck terminals and certain City Roadways or parts thereof as terminal access routes for interstate trucks in accordance with Section 35401.5 of the Vehicle Code, as follows:

A. As used in this chapter, "interstate truck" shall mean a combination of vehicles as described in Section 35401.5 of the Vehicle Code and not exceeding the lengths set forth therein, and "terminal" shall have the meaning specified in Section 35401.5 of the Vehicle Code.

B. Any interested person desiring an access route to an interstate truck terminal facility from the federally designated highway system shall submit to the Director an application, on a form as provided by the Director, together with such information as may be required by the Director and appropriate fees.

C. The Director will cause an investigation to be made to ascertain whether or not the proposed terminal facility meets the requirements for an interstate truck terminal. Upon his approval of that designation, he will then determine the capability of the route requested and alternate routes, whether requested or not. Determination of route capability will include, without limitation, a review of adequate turning radius and lane widths of ramps, intersections and roadways and general traffic conditions such as sight distance, speed and traffic volumes. No access off a federally designated highway system will be approved without the approval of the State of California Department of Transportation.

D. Should the requested route pass through the City of Elk Grove to a terminal located in another jurisdiction, the applicant shall submit proof of compliance with that

jurisdiction's application process. Coordination of the approval of the route through the City will be the responsibility of the entity which controls the terminal's land use.

**10.41.020 Fees and costs.**

A. The applicant shall pay a nonrefundable application fee, as established by the City Council by resolution, sufficient to pay the cost of the review of the Interstate Truck terminal designation and the review of the proposed and alternate routes.

B. Upon the approval of the terminal designation and route by the City, the applicant shall deposit with the City sufficient funds as estimated by the Director to pay for the purchase and installation of terminal trailblazer signs. Trailblazer signs shall be required at every decision point in the City on route to the terminal and at intermediate points not closer than one-half (0.5) mile apart as determined by the Director. Upon completion of the installation of the signs, the actual cost shall be computed and any difference between the actual and the estimated cost shall be billed or refunded to the applicant, whichever the case may be. Any excess due to the City shall be due and payable thirty (30) days after billing and thereafter shall bear interest at the maximum rate permitted by law. No interstate truck terminal or access route may be used for such purpose until such signs as may be required are in place.

**10.41.030 Reconstruction.**

A. If all feasible routes to a requested interstate truck terminal are found unsatisfactory by the Director, the applicant may request reconstruction to correct the deficiencies identified by the Director. All costs of engineering, construction and inspection will be the responsibility of the applicant.

Except when the reconstruction of deficiencies is within the jurisdiction of the state of California, the actual construction will be the responsibility of the applicant. When the work is within the jurisdiction of the state of California, it will be under the direction of the state of California.

B. If at any time within five (5) years from the date of completion of the reconstruction by the applicant, should any applicant seek approval of an interstate truck terminal which would use the route upon which such reconstruction was accomplished, any such applicant's fee may be required by the Director to include that applicant's proportionate share of the reconstruction, as determined by the Director, which fee shall be disbursed by the City of Elk Grove to the applicant who paid for the reconstruction as well as to any applicant who contributed to the cost of reconstruction under this subsection. Nothing herein shall require the payment of a proportionate fee if the applicant doing the work failed to file with the Director a report documenting the actual cost of the reconstruction work, subject to the approval of the Director.

#### **10.41.040 Revocation of route.**

The Director may revoke any approved interstate truck terminal or access route if the terminal or route becomes hazardous for vehicular traffic. Such a hazard includes, but is not limited to, the inability of interstate trucks to negotiate the route or said vehicles causing unsafe driving conditions for other vehicular traffic or pedestrians. If the route designation is revoked within three (3) years after establishment, the City will reimburse the applicant for his actual costs of signing and reconstruction.

#### **10.41.050 Prohibition.**

Except as expressly permitted by law, no person shall drive an interstate truck upon any City roadway not designated for such purpose.

### **Chapter 10.42**

#### **TRUCK LENGTHS**

Sections:

10.42.010 Limits established.

10.42.020 Signs to be placed.

10.42.030 Violation prohibited.

10.42.040 Exemptions.

#### **10.42.010 Limits established.**

For purposes of this chapter, a "semitrailer truck" is defined as a truck tractor-trailer combination or truck tractor-semitrailer combination.

#### **10.42.020 Signs to be placed.**

The Director shall place and maintain appropriate signs giving notice of the truck length limit at all entrances to the restricted part of the road, and no regulations for that part of the road shall be effective until the signs are in place.

#### **10.42.030 Violation prohibited.**

No person shall operate a vehicle in violation of the signs limiting truck length, as provided by this chapter.

#### **10.42.040 Exemptions.**

This chapter shall not apply to:

- A. Authorized emergency vehicles as defined in Division 1 of the Vehicle Code.
- B. Trucks or semitrailer trucks which enter the restricted area for the purpose of providing services, making pickups or deliveries of goods, wares and merchandise or delivering construction materials to sites within the restricted highway segment that have no other means of access.
- C. Oversize vehicles for which a permit has been issued by the Public Works Department pursuant to Article VI of Chapter 5 of Division 15 of the Vehicle Code.

#### **Chapter 10.44**

##### **ONE-WAY STREETS**

Sections:

10.44.020 Signs to be placed.

10.44.030 Violation prohibited.

##### **10.44.020 Signs to be placed.**

The Director shall place and maintain appropriate signs giving notice of the one-way highway system, and no such regulations shall be effective until the signs are in place.

##### **10.44.030 Violation prohibited.**

No person shall operate a vehicle in violation of the signs designating one-way streets, as herein provided.

#### **Chapter 10.48**

##### **SPEED ZONES**

Sections:

10.48.010 Speed zones.

#### 10.48.020 Speed limits.

#### **10.48.010 Speed zones.**

A. The City Council has determined, on the basis of engineering and traffic surveys, that the speed permitted by the Vehicle Code upon certain roadways is not in conformance with the safe and efficient operation of vehicles thereon. The *prima facie* speed limits on such roadways or parts of such roadways shall be as specified by ordinance when signs are erected giving notice of such limits.

B. All speed zones shall continue in effect as established by Ordinance No. 703, as adopted and amended prior to the adoption of this code. All provisions of Ordinance No. 703 and amendments thereto relating to speed zones shall continue in effect notwithstanding the adoption of this code. The speed zone provisions of Ordinance No. 703 which continue in effect as provided in this section shall be subject to revision by ordinance from time to time pursuant to the Vehicle Code in the same manner as prior to the adoption of this code.

#### **10.48.020 Speed limits.**

A. The City Council hereby declares that the *prima facie* speed limit for Elk Grove Boulevard between Laguna Springs Drive and Franklin Boulevard shall be fifty (50 mph) miles per hour.

B. The City Council hereby declares that the speed limit for Elk Grove Boulevard between Waterman Road and Grantline Road shall be forty (40 mph) miles per hour.

C. The City Council hereby declares that the speed limit on:

1. Rubia Drive between Waterman Road and Sheldon Road shall be thirty-five (35 mph) miles per hour;

2. East Park Drive between Elk Grove Boulevard and Stonebrook Drive shall be thirty (30 mph) miles per hour;

3. Stonebrook Drive between East Park Drive and Crisswell Drive shall be thirty (30 mph) miles per hour; and

4. Stonebrook Drive between East Park Drive and Bond Road shall be thirty-five (35 mph) miles per hour.

D. The City Council hereby declares that the speed limit for Sheldon Road from Highway 99 to Elk Grove-Florin is forty-five (45 mph) miles per hour and from Elk Grove-Florin to Grant Line Road is fifty (50 mph) miles per hour.

E. The City Council hereby declares that the speed limit on Bruceville Road between Elk Grove Boulevard and Bilby Road shall be forty-five (45 mph) miles per hour.

F. The City Council hereby declares that the speed limit on Grant Line Road between Sheldon Oaks Way and Menlo Oaks Court shall be thirty-five (35 mph) miles per hour.

G. The City Council hereby declares that the speed limit on West Stockton Boulevard between Auto Center Drive and Poppy Ridge Road shall be thirty-five (35 mph) miles per hour.

H. The City Council hereby declares the following speed limits:

1. Bellaterra Drive between the west intersection with Whitelock Parkway and the east intersection with Whitelock Parkway shall be thirty-five (35 mph) miles per hour.

2. Bilby Road between the City limits and Willard Parkway shall be thirty-five (35 mph) miles per hour.

3. Cresleigh Parkway/Allesandria Drive between Elk Grove Boulevard to Bellaterra Drive shall be thirty-five (35 mph) miles per hour.

4. Fire Poppy Drive between Elk Grove Boulevard and Bellaterra Drive shall be thirty-five (35 mph) miles per hour.

5. Pleasant Grove School Road between Bader Road and Grant Line Road shall be thirty-five (35 mph) miles per hour.

6. Sheldon Road between Elk Grove-Florin Road and Grant Line Road shall be forty-five (45 mph) miles per hour.

7. Auberry Drive between Geneva Pointe Drive and Power Inn Road shall be thirty-five (35 mph) miles per hour.

8. Elk Grove Boulevard between Williamson Drive and Elk Grove-Florin Road shall be thirty-five (35 mph) miles per hour.

9. Laguna Park Drive between Laguna Boulevard E. and Laguna Boulevard W. shall be thirty (30 mph) miles per hour.

10. Power Inn Road between Sheldon Road and Old Calvine Road shall be thirty-five (35 mph) miles per hour.

11. Stonebrook Drive between Bond Road and Winding River Way shall be thirty-five (35 mph) miles per hour.
12. Terrazzo Drive between Bruceville Road and Bellaterra Drive shall be thirty-five (35 mph) miles per hour.
13. Willard Parkway between Poppy Ridge Road and Bilby Road shall be fifty (50 mph) miles per hour.
14. Calvine Road between Bradshaw Road and Vineyard Road shall be fifty-five (55 mph) miles per hour.
15. Waterman Road between Rancho Drive and Mainline Drive/Dino Drive shall be fifty (50 mph) miles per hour.
16. Civic Center Drive between Bruceville Road and Elk Grove Boulevard shall be thirty-five (35 mph) miles per hour.
17. Whitelock Parkway between Bruceville Road and Franklin Boulevard shall be forty (40 mph) miles per hour.
18. Franklin High Road between Whitelock Parkway and Whitelock Parkway shall be thirty-five (35 mph) miles per hour.
19. West Stockton Boulevard between Laguna Boulevard and Lewis Stein Road shall be thirty-five (35 mph) miles per hour.
20. Stonebrook Drive between East Park Drive and Winding River Way shall be twenty-five (25 mph) miles per hour.
21. West Lake Drive between Elberon Way and Nolan Street shall be thirty-five (35 mph) miles per hour.
22. Grant Line Road between Bond Road and Sheldon Woods Way shall be thirty-five (35 mph) miles per hour.
23. Grant Line Road between Bond Road and 650 feet south of Equestrian Drive shall be forty-five (45 mph) miles per hour.
24. Grant Line Road between Sheldon Woods Way and 980 feet north of Spanish Grant Road shall be forty-five (45 mph) miles per hour.



## **Chapter 10.58**

### **OFF-ROAD VEHICLES**

#### Sections:

- 10.58.010 Permit required.
- 10.58.020 Motor vehicle – Definition.
- 10.58.030 Exemption – Commercially operated facilities.
- 10.58.040 Exemption – Public facilities.
- 10.58.050 Exemption – Sanctioned events.
- 10.58.060 Exemption – Parking areas.
- 10.58.070 Exemptions – Miscellaneous.
- 10.58.080 Operation by permit.
- 10.58.090 Application for permit.
- 10.58.100 Permits – Grounds for denial.
- 10.58.120 Permit conditions.
- 10.58.130 Copies of permit – Possession required.
- 10.58.140 Revocation of permit.
- 10.58.150 Fees – Expiration and renewal.
- 10.58.160 Appeal.
- 10.58.170 Public nuisance prohibited.

#### **10.58.010 Permit required.**

No person shall operate or cause to be operated a motor vehicle except upon the streets, roadways and thoroughfares specifically established and provided for the operation of such vehicles except when authorized by a permit issued pursuant to this chapter.

**10.58.020 Motor vehicle – Definition.**

As used in this chapter, “motor vehicle” means any self-propelled device in or upon which any person or property may be moved, excepting a device moved by human power or used exclusively upon stationary rails or tracks.

**10.58.030 Exemption – Commercially operated facilities.**

This chapter does not apply to any area commercially operated for the purpose of providing facilities wherein motor vehicles can be operated for recreational purpose, if said facilities are duly licensed and permitted under the applicable laws pertaining thereto.

**10.58.040 Exemption – Public facilities.**

This chapter does not apply to any area which is specifically established by the City or other governmental body or agency for the purpose of allowing motor vehicles to be operated thereon for recreational purposes.

**10.58.050 Exemption – Sanctioned events.**

This chapter does not apply to any organized racing or competitive event upon a closed course which is conducted under the auspices of a recognized sanctioning body under permit issued by the City.

**10.58.060 Exemption – Parking areas.**

This chapter does not apply to any area, either publicly or privately owned, designated for the parking or storage of motor vehicles, when the operation of a vehicle on such area is solely for the purposes of ingress thereto and egress therefrom.

**10.58.070 Exemptions – Miscellaneous.**

This chapter does not apply to any motor vehicle which is:

- A. An implement of husbandry;
- B. A wheelchair;
- C. A golf cart, when used on a golf course;
- D. Used for any purpose relating to the conduct of a business where said business is conducted;

E. Owned by the City or other governmental body or agency, and is operated by an employee of the City or other governmental body or agency who is acting within the scope of his employment;

F. Operated by or under contract with a utility, whether privately or publicly owned;

G. Used in connection with construction activities for the purposes for which it was designed.

**10.58.080 Operation by permit.**

Any person possessing a valid permit issued pursuant to this chapter may operate a motor vehicle other than upon the streets, highways and thoroughfares specifically established and provided therefor, provided such operation is in conformance with the terms and conditions of such permit.

**10.58.090 Application for permit.**

The owner or lessee of any real property within the City, or the agent of either, may apply for a permit to operate one (1) or more motor vehicles on said property when the operation of such vehicles would otherwise be in violation of EGMC Section 10.58.010 by filing an application with the Chief of Police.

**10.58.100 Permits – Grounds for denial.**

Upon receipt of the application for permit, the Chief of Police shall grant or deny the permit and shall notify the applicant by mail of such action. A permit may be denied when it appears to the satisfaction of the Chief of Police that the issuance of the permit would:

- A. Create a condition annoying to adjacent residents;
- B. Create law enforcement problems;
- C. Endanger the health, safety or welfare of persons in the area.

**10.58.120 Permit conditions.**

A permit may be issued subject to conditions regulating one or more of the following:

- A. Hours of operation of motor vehicles;
- B. Maximum number of motor vehicles which may be operated at any one time;
- C. Type of motor vehicles which may be operated;
- D. Any other reasonable condition required under the circumstances.

**10.58.130 Copies of permit – Possession required.**

A. When a permit is issued, the Chief of Police shall issue in connection therewith a number of copies of such permit to the applicant, who shall give a copy of such permit to each person operating a motor vehicle on the premises for which the permit is issued.

B. The maximum number of copies of the permit given the applicant shall not exceed the maximum number of motor vehicles which may be operated on the premises at any one time, if such number has been determined pursuant to EGMC Section 10.58.120.

C. No person shall operate a motor vehicle on the premises for which the permit is issued unless he has in his immediate possession a copy of such permit and shall display the same upon demand to any duly authorized law enforcement officer.

**10.58.140 Revocation of permit.**

A permit issued pursuant to this chapter may be revoked when it appears to the satisfaction of the Chief of Police that one (1) or more of the following conditions exist:

A. The person to whom the permit was issued has failed to abide by the conditions of such permit;

B. A person operating a motor vehicle by permission of the person to whom the permit was issued has failed to abide by the conditions of such permit;

C. False or misleading statements were made by the applicant in securing the permit;

D. Circumstances surrounding the premises for which the permit was issued have changed and the continued operation of motor vehicles on the premises would violate one (1) or more provisions of EGMC Section 10.58.100.

**10.58.150 Fees – Expiration and renewal.**

A. The fee for an initial permit shall be Ten and no/100<sup>ths</sup> (\$10.00) Dollars. The permit shall be nontransferable and shall expire one (1) year after the date of issuance.

B. A permit may be renewed from year to year upon payment of a Two and no/100<sup>ths</sup> (\$2.00) Dollars fee; provided, however, that the renewal may be granted, conditioned or denied in accordance with the provisions of EGMC Section 10.58.100 and 10.58.120.

**10.58.160 Appeal.**

A. Any applicant for a permit, or a permit holder, aggrieved by action of the Chief of Police pursuant to this chapter may, within ten (10) days of being notified of such action, appeal the same pursuant to EGMC Chapter 1.11.

**10.58.170 Public nuisance prohibited.**

Nothing in this chapter is intended to authorize the maintenance of a public nuisance.

**Chapter 10.60**

**PRIVATE PARKING FACILITIES**

Sections:

10.60.010 Public traffic regulation.

10.60.020 Notice to public.

**10.60.010 Public traffic regulation.**

The City Council, pursuant to the authority granted by Section 21107.8 of the Vehicle Code and subject to the conditions and limitations specified in EGMC Section 10.60.020, finds that the following privately owned and maintained off-street parking facilities are generally held open for public use. As provided in Section 21107.8 of the Vehicle Code, Sections 22350, 22507.8, 23103 and 23109 of the Vehicle Code are hereby made applicable to said parking facilities. Where applicable, associated privately owned and maintained access and perimeter roads shall be considered as part of said parking facilities:

**10.60.020 Notice to public.**

The provisions of EGMC Section 10.60.010 shall not apply to any privately owned and maintained off-street parking facility unless the owner or operator of such facility has caused to be posted in a conspicuous place at each entrance to such a facility a notice not less than seventeen by twenty-two (17" x 22") inches in size with lettering not less than one (1") inch in height, to the effect that such off-street parking facility is subject to public traffic regulations and control.

**Chapter 10.62**

**TRANSIT AND SCHOOL DISTRICT LOADING ZONES**

Sections:

10.62.010 Purpose.

10.62.020 Use of transit loading zones.

**10.62.010 Purpose.**

Section 22500.5 of the California Vehicle Code authorizes the adoption of a local ordinance to permit an agreement between a transit system operating buses engaged as common carriers and a public school district to permit school buses owned by, or operated for, the said school district to load or unload passengers in spaces designated for the loading or unloading of passengers of the transit system buses.

**10.62.020 Use of transit loading zones.**

Upon agreement between the transit system authorized according to law to operate as a common carrier within the City of Elk Grove and a public school district, school buses owned by or operated under contract for such public school district may stop for the loading or unloading of passengers alongside any or all curb spaces designated for the loading or unloading of passengers of the transit system buses as provided in Section 22500.5 of the Vehicle Code.

**Chapter 10.66**

**REGULATION OF CRUISING**

Sections:

10.66.010 Cruising prohibited.

10.66.020 Definitions.

10.66.030 Warning against cruising.

10.66.040 Violation of this chapter.

10.66.050 Posting of no-cruising zones.

**10.66.010 Cruising prohibited.**

No person shall engage in the activity known as "cruising," as defined in this chapter, on the public streets or roadways of the City of Elk Grove in any area which has been posted as a no-cruising zone.

**10.66.020 Definitions.**

“Congested traffic” means traffic on any public street or highway which is delayed to the point that:

A. Motor vehicles cannot move through a three hundred (300’ 0”) foot approach corridor to an intersection controlled by a traffic light within two (2) complete green light cycles where the delay in forward movement is due to the position of other motor vehicles; or

B. Motor vehicles cannot move through a three hundred (300’ 0”) foot approach corridor to an intersection controlled by a traffic light within a five (5) minute period of time where the delay in forward movement is due to the position of other motor vehicles; or

C. Motor vehicles cannot readily move forward on portions of public streets or roadways between intersections because traffic speed has slowed to less than five (5 mph) miles per hour, and the delay in movement is due to the position of other motor vehicles.

The determination that a street or highway is congested shall be made by the ranking peace officer on duty in the affected area.

“Cruising” shall be defined as the repetitive driving of any motor vehicle past a traffic-control point in congested traffic at or near the traffic-control point.

“Green light cycle” shall mean the period commencing upon the switching of a red light to a green light through to the return of a red light.

“Traffic-control point” shall mean a location along a public street or highway utilized by a peace officer on duty in the affected area as an observation point in order to monitor traffic conditions for potential violations of this chapter.

**10.66.030 Warning against cruising.**

A peace officer may issue a written notice to any person driving any motor vehicle passing a traffic-control point that any subsequent passage past that traffic-control point within the next succeeding four hours shall be a violation of this chapter.

**10.66.040 Violation of this chapter.**

Any person who, after having received a written notice as described in EGMC Section 10.66.030, subsequently drives past the same traffic-control point within a four (4) hour period shall be guilty of an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **10.66.050 Posting of no-cruising zones.**

A. This chapter will be enforced in any area which has been posted as a no-cruising zone.

B. No-cruising signs shall be posted at the beginning and end of any public street or roadway which is a no-cruising zone. The signs shall reference Section 21100(k) of the California Vehicle Code and this chapter.

## **Chapter 10.68**

### **ILLEGAL SPEED CONTESTS AND EXHIBITIONS OF SPEED**

Sections:

10.68.010 Purpose.

10.68.020 Definitions.

10.68.030 Spectator at illegal speed contest or illegal exhibitions of speed – Violation.

10.68.040 Relevant circumstances to prove a violation.

10.68.050 Admissibility of prior acts.

#### **10.68.010 Purpose.**

A. The Council for the City of Elk Grove finds and declares that pursuant to Section 23109 of the California Vehicle Code, motor vehicle speed contests and exhibitions of speed conducted on public streets and highways are illegal. Illegal motor vehicle speed contests and illegal exhibitions of speed are more commonly known as street races or drag races. Streets within the City of Elk Grove have been the site of continuing and escalating illegal street racing. Street racing threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, and interferes with the right of private business owners to enjoy the use of their property. Racers and spectators gather on these streets late at night and in the early morning hours, blocking the streets and sidewalks to traffic, forming a race track area, and otherwise encouraging, aiding and abetting the racing process.

B. Illegal street racers accelerate to high speeds without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby. The racers drive quickly from street to street, race for several hours, and then move to other locations upon the arrival of the



police. Those who participate in this illegal activity are very sophisticated, using their cell phones, police scanners, and other electronic devices to communicate with each other to avoid arrest. They also use the Internet, including the website myspace.com, to provide information on where to race, and give advice on how to avoid detection and prosecution. Traffic accidents, property crimes, and calls for police service have increased. In some cases, illegal street races attract up to fifty (50) spectators. The mere presence of spectators at these events fuels the illegal street racing and creates an environment in which these illegal activities can flourish. This chapter makes evidence of specified prior acts admissible to show the propensity of the defendant to be present at or attend illegal street races, if the prior act or acts occurred within three (3) years of the presently charged offense.

C. This chapter is adopted to prohibit spectators at illegal street races with the aim of significantly curbing this activity. This chapter targets a very clear, limited population and gives proper notice to citizens as to what activities are lawful and what activities are unlawful. In discouraging spectators, the act of organizing and participating in illegal street races will be discouraged.

#### **10.68.020 Definitions.**

“Illegal motor vehicle speed contest” or “illegal exhibition of speed” means any illegal speed contest or illegal exhibition of speed referred to in Sections 23109(a) and (c) of the California Vehicle Code.

“Preparations for the illegal motor vehicle speed contest or illegal exhibition of speed” include, but are not limited to, situations in which:

1. A group of motor vehicles or individuals has arrived at a location for the purpose of participating in or being spectators at the event;
2. A group of individuals has lined one or both sides of a public street or roadway for the purpose of participating in or being a spectator at the event;
3. A group of individuals has gathered on private property open to the general public without the consent of the owner, operator, or agent thereof for the purpose of participating in or being a spectator at the event;
4. One (1) or more individuals has impeded the free public use of a public street or roadway by actions, words, or physical barriers for the purpose of conducting the event;
5. Two (2) or more vehicles have lined up with motors running for an “illegal motor vehicle speed contest” or “illegal exhibition of speed”;

6. One (1) or more drivers is revving his engine or spinning his tires in preparation for the event; or

7. An individual is stationed at or near one (1) or more motor vehicles serving as a race starter.

“Spectator” means any individual who is present at an “illegal motor vehicle speed contest” or “illegal exhibition of speed,” or at a location where preparations are being made for such activities, for the purpose of viewing, observing, watching, or witnessing the event as it progresses. “Spectator” includes any individual at the location of the event without regard to whether the individual arrived at the event by driving a vehicle, riding as a passenger in a vehicle, walking, or arriving by some other means.

**10.68.030 Spectator at illegal speed contest or illegal exhibitions of speed – Violation.**

A. Any individual who is knowingly present as a spectator, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, at an illegal motor vehicle speed contest or illegal exhibition of speed is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

B. Any individual who is knowingly present as a spectator, either on a public street or highway, or on private property open to the general public without the consent of the owner, operator, or agent thereof, where preparations are being made for an illegal motor vehicle speed contest or illegal exhibition of speed is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

C. An individual is present at the illegal motor vehicle speed contest or illegal exhibition of speed if that individual is within two hundred (200’ 0”) feet of the location of the event, or within two hundred (200’ 0”) feet of the location where preparations are being made for the event.

D. Exemption. Nothing in this section prohibits law enforcement officers or their agents from being spectators at illegal motor vehicle speed contests or illegal exhibitions of speed in the course of their official duties.

**10.68.040 Relevant circumstances to prove a violation.**

Notwithstanding any other provision of law, to prove a violation of EGMC Section 10.68.030, admissible evidence may include, but is not limited to, any of the following:

A. The time of day;

B. The nature and description of the scene;

- C. The number of individuals at the scene;
- D. The location of the individual charged in relation to any individual or group present at the scene;
- E. The number and description of motor vehicles at the scene;
- F. That the individual charged drove or was transported to the scene;
- G. That the individual charged has previously participated in an illegal motor vehicle speed contest or illegal exhibition of speed;
- H. That the individual charged has previously aided and abetted an illegal motor vehicle speed contest or illegal exhibition of speed;
- I. That the individual charged has previously attended an illegal motor vehicle speed contest or illegal exhibition of speed;
- J. That the individual charged was previously present at a location where preparations were being made for an illegal speed contest or illegal exhibition of speed or where an illegal exhibition of speed or illegal motor vehicle speed contest was in progress.

#### **10.68.050 Admissibility of prior acts.**

The list of circumstances set forth in EGMC Section 10.68.040 is not exclusive. Evidence of prior acts may be admissible to show the propensity of the defendant to be present at or attend an illegal motor vehicle speed contest or illegal exhibition of speed, if the prior act or acts occurred within three (3) years of the presently charged offense. These prior acts may always be admissible to show knowledge on the part of the defendant that an illegal speed contest or illegal exhibition of speed was taking place at the time of the presently charged offense. Prior acts are not limited to those that occurred within the City of Elk Grove.

#### **Chapter 10.70**

### **IMPOUNDMENT OF VEHICLES USED IN ILLEGAL SPEED CONTESTS AND EXHIBITIONS OF SPEED**

Sections:

10.70.010 Purpose.

10.70.020 Impoundment.

10.70.030 Storage hearing.

10.70.040 Early release of impounded vehicle.

10.70.050 Release of vehicle after impoundment period.

10.70.060 Costs and charges related to impoundment.

10.70.070 Period of storage.

**10.70.010 Purpose.**

A. The Council for the City of Elk Grove finds and declares that pursuant to Section 23109 of the California Vehicle Code, motor vehicle speed contests and exhibitions of speed conducted on public streets and roadways are illegal. Illegal motor vehicle speed contests and illegal exhibitions of speed are more commonly known as street races or drag races. Streets within the City of Elk Grove have been the site of continuing and escalating illegal street racing. Street racing threatens the health and safety of the public, interferes with pedestrian and vehicular traffic, creates a public nuisance, and interferes with the right of private business owners to enjoy the use of their property. Racers and spectators gather on these streets late at night and in the early morning hours, blocking the streets and sidewalks to traffic, forming a race track area, and otherwise encouraging, aiding and abetting the racing process.

B. Illegal street racers accelerate to high speeds without regard to oncoming traffic, pedestrians, or vehicles parked or moving nearby. The racers drive quickly from street to street, race for several hours, and then move to other locations upon the arrival of the police. Those who participate in this illegal activity are very sophisticated, using their cell phones, police scanners, and other electronic devices to communicate with each other to avoid arrest. They also use the Internet, including the website myspace.com, to provide information on where to race, and give advice on how to avoid detection and prosecution. Traffic accidents, property crimes, and calls for police service have increased.

C. This chapter is adopted to allow for the impoundment of vehicles that are used in illegal speed contests and illegal exhibitions of speed. The chapter targets only the automobiles that are used in violation of Section 23109 of the California Vehicle Code and gives proper notice to citizens as to the procedural mechanisms that the City must

follow. Through impounding vehicles, the act of participating in illegal street races will be discouraged.

D. This chapter is dedicated to the memory of Anthony Mondragon and Nick Davis. The City Council, in enacting the ordinance codified in this chapter, recognizes and thanks the citizens of the City of Elk Grove, and particularly Constance Conley, Linda Ford, Rebecca Davis, and Patrick Hume for their participation and input into this chapter.

**10.70.020 Impoundment.**

A. Consistent with Section 23109.2 of the California Vehicle Code, whenever a peace officer determines that a person was engaged in a motor vehicle speed contest, as described in subdivision (a) of Section 23109 of the California Vehicle Code, the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the motor vehicle used in that contest in accordance with Chapter 10 (commencing with Section 22650) of the California Vehicle Code.

B. A motor vehicle so seized may be impounded for not more than sixty (60) days.

C. In any proceeding arising out of a violation of this chapter, the person prosecuted shall not be eligible for participation in any Neighborhood Accountability Board program and shall not be eligible for deferred entry of judgment.

**10.70.030 Storage hearing.**

The registered and legal owner of a vehicle that is removed and seized under EGMC Section 10.70.020 or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with Section 22852 of the California Vehicle Code.

**10.70.040 Early release of impounded vehicle.**

A. Notwithstanding Chapter 10 (commencing with Section 22650) of the California Vehicle Code or any other provision of law, an impounding agency shall release a motor vehicle to the registered owner or his or her agent prior to the conclusion of the impoundment period described in EGMC Section 10.70.020 under any of the following circumstances:

1. If the vehicle is a stolen vehicle.
2. If the person alleged to have been engaged in the motor vehicle speed contest was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense.

3. If the registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation pursuant to EGMC Section 10.70.020, or was unaware that the driver was using the vehicle to engage in any of the activities described in EGMC Section 10.70.020.

4. If the legal owner or registered owner of the vehicle is a rental car agency.

5. If, prior to the conclusion of the impoundment period, a citation or notice is dismissed under Section 40500 of the California Vehicle Code, criminal charges are not filed by the district attorney because of a lack of evidence, or the charges are otherwise dismissed by the court.

B. A vehicle shall be released pursuant to this section only if the registered owner or his or her agent presents a currently valid driver's license to operate the vehicle and proof of current vehicle registration, or if ordered by a court.

C. If, pursuant to subsection (A)(5) of this section, a motor vehicle is released prior to the conclusion of the impoundment period, neither the person charged with a violation of Section 23109 of the California Vehicle Code nor the registered owner of the motor vehicle is responsible for towing and storage charges nor shall the motor vehicle be sold to satisfy those charges.

#### **10.70.050 Release of vehicle after impoundment period.**

A vehicle seized and removed under EGMC Section 10.70.020 shall be released to the legal owner of the vehicle, or the legal owner's agent, on or before the sixtieth (60) day of impoundment if all of the following conditions are met:

A. The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person, not the registered owner, holding a security interest in the vehicle.

B. The legal owner or the legal owner's agent pays all towing and storage fees related to the impoundment of the vehicle. No lien sale processing fees shall be charged to a legal owner who redeems the vehicle on or before the fifteenth (15) day of impoundment.

C. The legal owner or the legal owner's agent presents foreclosure documents or an affidavit of repossession for the vehicle.

#### **10.70.060 Costs and charges related to impoundment.**

A. The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 of the California Vehicle Code.

B. Notwithstanding subsection (A) of this section, if the person convicted of engaging in a motor vehicle speed contest was not authorized by the registered owner of the motor vehicle to operate the motor vehicle at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5 of the California Vehicle Code incurred by the registered owner to obtain possession of the vehicle, unless the court finds that the person convicted does not have the ability to pay all or part of those charges.

C. If the vehicle is a rental vehicle, the rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 of the California Vehicle Code that were incurred by the rental car agency in connection with obtaining possession of the vehicle.

D. The owner shall not be liable for any towing and storage charges related to the impoundment if acquittal or dismissal occurs.

E. The vehicle shall not be sold prior to the defendant's conviction.

F. The impounding agency is responsible for the actual costs incurred by the towing agency as a result of the impoundment should the registered owner be absolved of liability for those charges pursuant to Paragraph (3) of Subdivision (c) of Section 23109.2 of the California Vehicle Code. Notwithstanding this provision, nothing shall prohibit impounding agencies from making prior payment arrangements to satisfy this requirement.

**10.70.070 Period of storage.**

Any period in which a vehicle is subjected to storage under this chapter shall be included as part of the period of impoundment ordered by the court under Subdivision (h) of Section 23109 of the California Vehicle Code.

**TITLE 11**

**(RESERVED)**

## **TITLE 12**

### **STREETS AND SIDEWALKS**

#### **Chapters:**

**12.01 Definitions**

**12.03 Street Improvements**

**12.04 Highway Plan**

**12.08 Construction in Streets**

**12.09 Street Trench Fee**

**12.12 Obstruction of Corners**

**12.16 House Numbers on Curbs**

**12.20 Underground Utility Districts**

**12.24 Street Numbering System**

#### **Chapter 12.01**

##### **DEFINITIONS**

###### **Sections:**

12.01.010 Generally.

12.01.020 Arterial.

12.01.040 Department.

12.01.050 Director.

12.01.060 Expressway.

12.01.070 Freeway.

12.01.080 Frontage road.

12.01.090 Major addition.

12.01.100 Street, City.



12.01.110 Street improvement.

12.01.120 Thoroughfare.

**12.01.020 Arterial.**

“Arterial” means a highway shown in the General Plan of the City as a four (4) lane arterial.

**12.01.040 Department.**

“Department” means the Public Works Department of the City of Elk Grove.

**12.01.050 Director.**

“Director” means the Public Works Director of the Public Works Department or his or her designee.

**12.01.060 Expressway.**

“Expressway” means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.

**12.01.070 Freeway.**

“Freeway” means a highway as established pursuant to Section 23.5 of the Streets and Highways Code.

**12.01.080 Frontage road.**

“Frontage road” means a street which is approximately parallel to and adjacent to a major thoroughfare, expressway, freeway, or other important traffic facility to which access is limited and which provides access to abutting properties and separation from through and fast traffic.

**12.01.090 Major addition.**

“Major addition” includes any of the following:

A. Any addition to a residential building or a structure when said addition exceeds fifty (50%) percent of the floor area of the existing building;

B. Any addition to a commercial or industrial building or structure when said addition exceeds ten (10%) percent of the floor area of the existing building or where any

remodeling within such a building or structure will, in the opinion of the Director, result in increased traffic upon the public streets; or

C. Where remodeling is undertaken to convert a structure from a residential use to any commercial or industrial use.

#### **12.01.100 Street, City.**

A street, highway, thoroughfare, road, avenue, boulevard, alley, lane, court, circle, drive or way shall not be a City street until and unless said street has been accepted into a street or road system maintained by the City. Streets and roads in public parks, public airports, public schools and similar public grounds shall not be construed to be City streets for the purpose of this chapter.

#### **12.01.110 Street improvement.**

A. "Street improvement" refers to such street work and utilities to be installed or agreed to be installed by a developer on land to be used for public or private streets, highways, ways and easements as are necessary for the general use of the property owners and local neighborhood traffic and drainage needs as condition precedent to the approval and acceptance of the project.

B. "Street improvement" also refers to such other specific improvements or type of improvements, the installation of which, either by the developer, by public agencies, by private utilities, by any other entity approved by the local agency or by a combination thereof, is necessary or convenient to ensure conformity to or implementation of the General Plan of the City.

#### **12.01.120 Thoroughfare.**

"Thoroughfare" means a highway shown on the General Plan of the City as a six (6) lane arterial with three (3) through travel lanes in each direction.

### **Chapter 12.03**

#### **STREET IMPROVEMENTS**

Sections:

12.03.010 Definitions.

12.03.020 Requirements.

12.03.030 Building permits.

12.03.040 Appeals.

12.03.050 Deferments and In-Lieu Payments.

12.03.060 Notice to install.

12.03.070 Security for frontage improvements.

12.03.080 Frontage improvement security.

12.03.090 Release of improvement security.

12.03.095 Calling of security.

12.03.110 Filing of plans.

12.03.210 Fee structure.

**12.03.010 Definitions.**

A. "Director" means the Public Works Director or his or her designee.

B. "Commercial property" means all property which is not residential, as defined in (D) below.

C. "Residential property" means single-family residences and duplexes.

D. "Street improvement" includes, but is not limited to, streets, curbs, gutters, sidewalks, sanitary sewer facilities, storm drain facilities, water supply facilities, street lighting, and landscaping.

**12.03.020 Requirements.**

A. Street improvements shall be required in conjunction with any construction, grading, or related work, including the construction of structures, buildings, or major additions thereto, on property located adjacent to any City street or on property utilizing any City street for ingress and egress, except that such improvements shall be deferred as described in EGMC Section 12.03.050 for residential property unless:

1. Street improvements are, in the opinion of the Director, necessary for public safety; or
2. Street improvements would complete the extension of improvements already existing on either side of the subject property.

B. The design, location and specifications of necessary street improvements shall conform to the City of Elk Grove Improvement Standards and City of Elk Grove Standard Construction Specifications, as adopted by the Director, and as amended from time to time.

C. Right-of-way and/or other necessary property rights shall be dedicated, in a form acceptable to the Director, for all required street improvements prior to the issuance of any building permit for any structure or building or major addition to a building or structure. The timing of required dedications shall not be affected by deferral of improvements pursuant to EGMC Section 12.03.050.

#### **12.03.030 Building permits.**

No building permit for any structure or building or major addition to a building or structure shall be issued until a site plan has been approved by the Director which shows all street improvements required by EGMC Section 12.03.020.

#### **12.03.040 Appeals.**

A. The applicant or any interested person adversely affected by any action relating to the provisions of this title may appeal the action by submitting a written notice of appeal with the City Manager within fifteen (15) days of the date of the decision. The City Manager shall conduct an informal hearing on the appeal within fifteen (15) days of receipt of the notice of appeal.

B. The applicant or any interested person may appeal the decision of the Director by filing a notice of appeal with the City Manager within fifteen (15) days of the date of the decision. Any such notice shall be in writing, signed by the appellant under penalty of perjury. The notice shall include the following information:

1. A complete description of the factual basis for the appeal;
2. The legal basis for the appeal; and
3. The remedy sought by the appellant.

If the appeal is not filed within such time or manner, the right to a review of the action against which complaint is made shall be deemed to have been waived.

#### **12.03.050 Deferments and In-Lieu Payments.**

A. The Director may defer the required construction of street improvements for commercial properties, or may accept a cash payment in an amount determined by the Director in lieu of improvements, if the Director determines that the character of the surrounding neighborhood and the present development thereof does not require the

installation and construction of the improvements required by this chapter, concurrent with the construction of the building or structures authorized by the building permit.

B. The Director may defer the required construction of street improvements for residential properties if the Director determines that installation and construction of the improvements required by this chapter are not required concurrently due to any of the following:

1. A street design has not been defined for the street on which the subject property is situated;
2. Improvements are installed on less than fifty (50%) percent of the public street frontage within a one quarter (0.25) mile radius of the proposed new structure(s) or major addition(s); or
3. The cost to install street improvements (including but not limited to grading improvements, landscaping and public utility relocation) would be equal to or greater than twenty (20%) percent of the fair market value of the proposed new structure(s) or major addition(s). The property owner has the burden of proof as to the cost of installation.

C. 1. The Director may defer the required construction of street improvements, or may accept a cash payment in an amount determined by the Director in lieu of improvements, for any property designated Rural Residential in the General Plan, any property designated Estate Residential in the General Plan and having an existing or proposed gross density of one (1) unit per acre or less, or any residential property within the Triangle Special Planning Area having a proposed gross density of one (1) unit per acre or less (herein referred to as "Low-Density Property");

2. i. The cost of deferred improvements, or the amount of cash payment in lieu of improvements, required as a condition of building or development on any parcel that is Low-Density Property abutting a roadway shown on the Master Plan of Roadways in the City General Plan shall be set at Two Hundred Sixty-Four and no/100<sup>ths</sup> (\$264.00) Dollars per linear foot of road frontage, not to exceed seventy-five (75' 0") feet for each abutting parcel, except that the cost on Sheldon Road between Bradshaw Road and Grantline Road shall be set at One Hundred Thirty-Eight and no/100<sup>ths</sup> (\$138.00) Dollars per linear foot of road frontage and the cost on Excelsior Road shall be set at One Hundred Six and no/100<sup>ths</sup> (\$106.00) Dollars per linear foot of road frontage, both not to exceed seventy-five (75' 0") feet for each abutting parcel;

ii. The cost of deferred improvements, or the amount of cash payment in lieu of improvements, required as condition of building or development on any parcel other than those described in subparagraph (c)(2)(i) shall be set at amounts determined

based on table of component costs prepared by the Director using standard engineering cost estimation methods and approved by resolution of the City Council;

iii. On January 1 of each calendar year, the amounts set forth in subparagraph (c)(2)(i) and the amounts included in the table described in subparagraph (c)(2)(ii) will automatically be adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the twenty (20) city CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year. Additionally, the City Council may amend the payment amounts by resolution as necessary to reflect changes in standards or other considerations that it deems relevant and appropriate;

iv. If an unusual parcel configuration, physical obstacle, or other existing condition affecting the construction of street improvements would increase the actual cost of construction with respect to a property, the Director may increase the foregoing amounts for that property using the same engineering cost estimation methods used to set these original amounts.

D. For both commercial and residential properties, no deferment shall be effective until the owner of the property enters into a deferred improvement agreement with the City. The Director may execute the agreement on behalf of the City and shall be the agent of the City for the performance, completion or release of the agreement. The agreement shall be in a form approved by the City Attorney and shall provide all of the following:

1. That the owner install the improvements at his or her own cost;
2. The installation shall occur at such time as the Director determines at his or her sole discretion that the character of the surrounding neighborhood and the development thereof require the installation of the improvements;
- 3 That if the City is required to install the improvements, all costs thereof shall be borne by the owner, shall be paid immediately and shall be a lien upon the property; except that, in cases of undue hardship as determined by the Director, the Director shall accept a promissory note and deed of trust in lieu of immediate payment; and Such other provisions as in the opinion of the Director and City Attorney are administratively necessary or convenient to carry out the purpose and intent of this chapter.

E. The City shall not accept cash payments in lieu of improvements from any owner of property until the owner enters into a payment agreement with the City. The Director may execute the agreement on behalf of the City. The agreement shall be in a form approved by the City Attorney and shall include the following:

1. A statement of the basis for the amount of the payment; and

2. The consent of the owner to the amount of the payment.

Any cash in-lieu payments made under an agreement shall be made prior to issuance of building permits, except that payment shall be made prior to parcel map approval for subdivisions of four or fewer lots.

F. Properties for which improvements have been deferred or in-lieu payments have been made hereunder shall be subject to the street improvement obligations resulting from any further development. If the resulting obligations are less than those previously imposed (and no street improvements have been constructed), then the City shall modify the deferred improvement agreement to reflect the lesser obligation or shall refund any in-lieu payments that exceed the amount of the revised obligation, together with interest thereon at the City's pooled investment rate from its original payment date to the date of refund.

**12.03.060 Notice to install.**

When the Director determines pursuant to EGMC Section 12.03.050 that the installation of the improvements is required, he or she shall give thirty (30) days notice in writing to the owner or his or her successor in interest to install the required improvements. When the Director requires the installation of the improvements, the owner or his or her successor in interest shall comply with the provisions of this chapter relating to the approval of improvement plans for the required improvements.

**12.03.070 Security for frontage improvements.**

This chapter applies to frontage improvements which are required on the approved plans and which are not covered by the Subdivision Map Act (Division 2, Title 7 of the Government Code) and EGMC Title 22.

**12.03.080 Frontage improvement security.**

A security in the amount of one hundred (100%) percent of the total estimated costs of the frontage improvements will be required for all projects to guarantee and warranty that the frontage improvements are completed in a timely manner and in accordance with the approved plans and City's Improvement Standards. The security shall guarantee and warranty the work for one year following its completion and acceptance against defective work, labor or materials. The estimate of frontage improvement costs will be approved by the Director. The security shall be implemented by means of a frontage improvement agreement between the owner and the City. This agreement shall be executed on behalf of the City by the Director. The security shall be in the form of a performance bond or other security acceptable to the Director. The security and agreement shall be provided to the City prior to improvement plan approval.

### **12.03.090 Release of improvement security.**

The security furnished by the owner shall be released by the Director upon satisfactory completion of the frontage improvement work.

### **12.03.095 Calling of security.**

In the event that the frontage improvements are not completed in a timely manner, or if the facilities are occupied before the improvements are complete, or if the project is suspended, or if the facilities are left in a condition that is detrimental to the public health and safety, the City may take action to complete the project or to collect unpaid fees and costs by calling the security.

### **12.03.110 Filing of plans.**

Plans for all required improvements, as well as for all additional improvements to be installed in, over or under any existing or proposed right-of-way, easement or parcel, shall be filed with the Director for checking.

A. Plans shall be subject to approval by the Director prior to the issuance of a building permit for subdivisions and developments not requiring submission of a final subdivision map in accordance with the provisions of EGMC Title 22.

B. The construction of all such improvements as may be approved by the Director is subject to his or her inspection to assure compliance with City requirements. The Director shall have full jurisdiction over the inspection of all such construction.

### **12.03.210 Fee structure.**

A fee shall be paid to the City for plan checking, inspection, material testing services and other services performed, or authorized to be performed, by the Director in accordance with the fee schedule adopted, and amended from time to time, by resolution of the City Council.

## **Chapter 12.04**

### **HIGHWAY PLAN**

Sections:

12.04.010 Purpose.

12.04.020 Map adopted.



12.04.030 Arterials – Right-of-way.

12.04.040 Thoroughfares – Right-of-way.

12.04.050 Special thoroughfares – Right-of-way.

12.04.070 Compliance with state plan.

12.04.080 Variance of right-of-way widths.

12.04.090 Enforcement.

**12.04.010 Purpose.**

This chapter is enacted for the purpose of adopting a portion of the highway plan for the City, adopting a map designating certain highways as being a part of the plan, establishing their width, and providing for the administration and enforcement thereof, the plan being a portion of the Circulation Element of the General Plan of the City as provided for in the planning law of the state, as amended.

**12.04.020 Map adopted.**

The map designated as the "Master Plan of Roadways" designating certain highways by symbols explained in the legend thereon to be freeways, special thoroughfares, thoroughfares, and arterials is adopted as a portion of the highway plan of the City. All notation, references and other information shown thereon shall be as much a part of this chapter as if the matters and information set forth by the map were fully described and set forth herein. Any amendment to the Master Plan of Roadways may be adopted by resolution of the City Council.

**12.04.030 Arterials – Right-of-way.**

Those highways designated on the map and shown by symbols to be four (4) lane arterials are required to have right-of-way widths set forth in the City Improvement Standards for arterial streets, except in the case of modifications allowed in accordance with EGMC Section 12.04.080. Arterials are intended to accommodate four through lanes of traffic and a turning lane or median island.

**12.04.040 Thoroughfares – Right-of-way.**

Those highways designated on the map and shown by symbols to be six (6) lane arterials are required to have right-of-way widths set forth in the City Improvement Standards for thoroughfare streets, except in the case of modifications allowed in

accordance with EGMC Section 12.04.080. Thoroughfares are intended to accommodate six (6) through lanes of traffic and a median island.

#### **12.04.050 Special thoroughfares – Right-of-way.**

Those highways designated on the map and shown by symbols to be eight (8) lane arterials are required to have right-of-way widths set forth in the City Improvement Standards for special thoroughfare streets, except in the case of modifications allowed in accordance with EGMC Section 12.04.080. Special thoroughfares are intended to accommodate eight (8) through lanes of traffic and a median island.

#### **12.04.070 Compliance with state plan.**

Where the highway plan shows a highway or freeway route on the map in the same location as a route for which the California Transportation Commission has adopted a precise route or plan, it is the intention of this chapter to indicate the same route or plan as adopted by the California Transportation Commission.

#### **12.04.080 Variance of right-of-way widths.**

Specified widths will vary in accordance with the City Improvement Standards to accommodate turning lanes and bus turnouts adjacent to intersections and to accommodate bus turnouts at midblock locations. An additional thirty-six (36' 0") foot right-of-way on one (1) or both sides of the street may be called for in special cases to accommodate a frontage road adjacent to the major street. The Director is hereby authorized to make minor adjustments to the right-of-way widths for city streets designated on the Master Plan of Roadways to accommodate special traffic, economic, or environmental conditions commensurate with traffic capacity and safety considerations.

#### **12.04.090 Enforcement.**

The provision of this chapter shall be administered and enforced by the Public Works Department.

### **Chapter 12.08**

#### **CONSTRUCTION IN STREETS**

Sections:

12.08.005 Title.

12.08.010 Definitions.

- 12.08.020 Permit required.
- 12.08.030 Permit fees.
- 12.08.040 Filing of plan.
- 12.08.050 Compliance with permits.
- 12.08.060 Refilling upon completion.
- 12.08.070 Deposit.
- 12.08.080 Waiver of deposit.
- 12.08.100 Refusal to refill excavation.
- 12.08.110 Exemptions.
- 12.08.120 Permit nontransferable.
- 12.08.130 Emergency excavation.
- 12.08.140 City liability.
- 12.08.150 Abatement proceedings.
- 12.08.160 Penalty and cost of enforcement.

**12.08.005 Title.**

This chapter shall be known as the construction in streets ordinance.

**12.08.010 Definitions.**

For purposes of this chapter, “person” includes any individual, firm, partnership, association, corporation, public district or other political subdivision.

For purposes of this chapter, “obstruction” shall be defined as any activity or structure, temporary or permanent, encroaching into the road right-of-way excepting utility poles or pole lines placed upon the unimproved portion of the highway.

For purposes of this chapter, “Director” means the Public Works Director, or his or her designee, of the Public Works Department of the City of Elk Grove.

#### **12.08.020 Permit required.**

It is unlawful for any person to lay, construct or maintain any pipes, drain, or conduit across, along or on any street, road or highway in the City, or to make any excavation or cut or obstruction therein for such purposes without first obtaining a permit from the Director to do so in the manner herein provided. Every applicant shall state in detail the following information:

- A. The location, dimension, purpose, extent and nature thereof;
- B. The time during which it is estimated that the excavation or obstruction will exist;
- C. Such other information as may be required by the Director.

#### **12.08.030 Permit fees.**

A minimum processing fee as established by resolution of the City Council shall be paid for permits prior to permit issuance, except where a continuous billing account has been established. Additional costs incurred by the City of Elk Grove Public Works Department for processing and inspection shall be billed to the permittee on a time and material basis, based upon the prevailing Public Works Department rates in effect at the time of permit processing.

#### **12.08.040 Filing of plan.**

Every applicant for a permit hereunder shall file with the application a plan showing the street or highway in which the proposed excavation will be made, together with the approximate locations and dimensions of the proposed excavations or obstructions. When excavations are made for service connections or for the repair of trouble in conduits or other pipes, or for culverts or drainage pipes under driveways, the Director may waive the filing of a plan.

#### **12.08.050 Compliance with permits.**

Any act done under the authority of a written permit issued pursuant to the provisions of this chapter shall be done in accordance with the terms and conditions of such permit.

#### **12.08.060 Refilling upon completion.**

Immediately upon completion of the work necessitating the excavation or obstruction permitted by the permit issued hereunder, the permittee shall at his or her own cost and expense, promptly and in a workmanlike manner refill the excavation or remove the obstruction. All excavations shall be refilled in a manner consistent with then applicable City Standard Specifications and the specific terms and conditions contained in the permit. Upon completion of the refilling of the excavation the Director shall require the

permittee to resurface that portion of the street or highway damaged by the permittee's excavation or obstruction. The resurfacing shall be done in accordance with the standard specifications prescribed by the City Council for the repair and resurfacing of City streets.

**12.08.070 Deposit.**

Except as hereinafter provided, the Director shall require the applicant to deposit a sum of money sufficient in the opinion of the Director to cover the total cost of refilling any excavation and proper restoration of the highway as required hereunder. The deposit shall be a corporate surety bond, or other corporate bond acceptable to the Director, cash, certified check or cashier's check payable to the City of Elk Grove. If the work of refilling the excavation is in accordance with the requirements of EGMC Section 12.08.060 and the restoration of the highway is completed in accordance with the standards herein prescribed, the deposit shall be returned to the permittee at the expiration of one hundred eighty (180) days from the completion of work. If during such time the refilled excavation settles, or if the resurfacing or restoration of the highway disintegrates or develops ruts or holes, the Director shall require the permittee to repair or resurface the highway to eliminate all ruts and holes therein. If the permittee fails or refuses to do such work, the Director shall do the work required, and pay the cost thereof out of the deposit. If the deposit is insufficient for this purpose the deficiency shall be charged to the permittee. If the permittee fails or refuses to pay such a deficiency upon demand, the City may recover the same by an action in any court of competent jurisdiction. Until the deficiency is paid in full no new permits shall be issued to such permittee.

**12.08.080 Waiver of deposit.**

The Director may waive a special deposit whenever in his or her opinion the proposed excavation or obstruction is of a minor nature or other suitable security is provided.

**12.08.100 Refusal to refill excavation.**

If the permittee fails or refuses to refill any excavation as required by EGMC Section 12.08.060 or remove any obstruction which he or she has placed upon the highway or fails and refuses to restore or resurface that portion of the surface of the highway damaged by him or her in accordance with the standards herein prescribed, the Director may do such refilling and resurfacing and pay the cost thereof out of the deposit made by the permittee. The deposit shall also be used to maintain the work for a period of one hundred eighty (180) days after completion thereof. If the amount of the deposit is not sufficient to cover the cost of the work and the maintenance thereof, the deficiency shall be charged to the permittee. If the permittee fails or refuses to pay the deficiency upon demand, the City may recover the same by an action in any court of competent

jurisdiction. Until the deficiency is paid in full no new permits shall be issued to such permittee. In lieu of such deductions the Director may bill such person for the amount owed by him or her to the City. If such amount is not paid within fifteen (15) days of the rendition of the bill, the Director may deduct the amount from the general deposit as herein provided.

#### **12.08.110 Exemptions.**

No deposit shall be required of any public district, public utility, or political subdivision (as provided in Section 1468 of the California Streets and Highway Code) which is authorized by law to establish or maintain works or facilities in, under or over any public highway, nor shall the application of any such governmental unit be denied except as hereinafter provided. Every such applicant shall be entitled as a matter of right to a permit but shall otherwise be subject to the provisions of this chapter. The Director shall have the right to deny a permit to such applicant where the applicant has failed to comply with the provisions of this chapter relating to the refilling of excavations, removing or relocating obstructions or the resurfacing or restoration of any highway, and the maintenance thereof, under any previous permit.

#### **12.08.120 Permit nontransferable.**

All permits issued hereunder shall be nontransferable and the work authorized by the permit must commence within thirty (30) days of issuance thereof, and must be completed within the time estimated in the application. The Director may grant a reasonable extension when the work has been unavoidably delayed without fault of the permittee.

#### **12.08.130 Emergency excavation.**

Nothing herein contained shall prohibit any person from making such excavation as may be necessary for the preservation of life or property when such necessity arises if the person making the excavation promptly notifies the Director of any such action. Any person making such excavation shall refill the excavation in accordance with the standards prescribed by this chapter that would be applicable if a permit was received.

#### **12.08.140 City liability.**

The issuance of a permit hereunder shall not be construed as imposing any liability upon the City or upon any of its officers or employees by reason of damage or injury to persons or property resulting from any excavation or obstruction authorized by the permit.

### **12.08.150 Abatement proceedings.**

Any activity contrary to the provisions of this chapter or contrary to an encroachment permit or the terms or conditions imposed therein is unlawful and a public nuisance, and the Director is authorized to commence in the name of the City actions or proceedings for the abatement and removal and enjoining thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such operation and restrain and enjoin any person, firm or corporation from so operating.

### **12.08.160 Penalty and cost of enforcement.**

A. Any person violating the provisions of this chapter or any encroachment permit issued pursuant to this chapter is guilty of a misdemeanor.

B. In addition to any other remedies available at law, any person violating the provisions of this chapter or any encroachment permit issued pursuant to this chapter shall be liable to the City for all expenses and damages caused by any such violation.

C.1. In addition to any other remedies provided by this chapter or state law, there are hereby imposed the following administrative civil penalties for each violation of this chapter or the terms and conditions of any encroachment permit issued pursuant to this chapter.

a. Any person initiating work within the public road right-of-way without obtaining an encroachment permit shall be subject to and responsible for a fine in the amount of Two Thousand Five Hundred and no/100<sup>ths</sup> (\$2,500.00) Dollars for a first violation, Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars for a second violation, or Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars for a third or subsequent violation.

b. Any person in possession of a valid encroachment permit that initiates work within the public road right-of-way, but fails to provide notification for inspection as required by the permit shall be subject to and responsible for a fine in the amount of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars for a first violation, Two Thousand Five Hundred and no/100<sup>ths</sup> (\$2,500.00) Dollars for a second violation, or Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars for a third or subsequent violation.

2. Whenever the Director determines that an encroachment violates the provisions of this chapter, or the terms and conditions of any encroachment permit issued pursuant to this chapter, the Director shall give written notice of such violation to the alleged violator. The notice shall include the following information:

a. The street address, legal description or other description sufficient to identify the affected property.

- b. The penalty imposed as a result of such violation.
- c. A statement that the party affected may file a written request for hearing with the Director if it objects to imposition of the penalty.
- d. A statement that the penalty imposed shall be enforced if the party fails to file a timely written request for a hearing.

3. Notice of any administrative civil penalty shall be served either personally or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested, to the alleged violator. Service shall be effective for all purposes upon receipt if personally served, or within five (5) days of mailing as herein provided. Proof of service of the notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice retained by the Director. The failure of a party to receive such notice shall not affect in any manner the validity of any proceedings taken pursuant to this chapter.

4.

- a. A written request for a hearing must be received by the Director within seven (7) days of the effective date of service of the notice. The Director shall set a time and date for the hearing and notify the party requesting the hearing in writing of the time, date and place of the hearing. The hearing shall be before a Hearing Officer designated by the Director.
- b. The hearing shall be held at the earliest administratively convenient date, taking into consideration the availability of counsel and witnesses. Notice of the date set for hearing shall be mailed to the parties at least ten (10) days prior to the hearing date. The alleged violator shall be entitled to appear personally, produce evidence, and be represented by counsel. At the hearing, the City shall have the burden of going forward first with evidence in support of the allegations contained in the order imposing penalties and shall have the burden of establishing the facts by a preponderance of the evidence. The Hearing Officer may administer oaths and take official notice of facts as authorized by law.
- c. Oral evidence shall be taken only on oath or affirmation.
- d. Each party shall have the following rights: to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to



impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against it.

- e. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.
- f. The order of the Hearing Officer shall be in writing resolving the essential issues raised and confirming, amending or rejecting the administrative civil penalty imposed by the Director. Procedures concerning notice and service thereof shall be as provided herein.

5. The manner of contesting the final order of the Hearing Officer concerning any administrative civil penalty is governed by Section 53069.4 of the Government Code, or any successor provision thereto. A copy of the notice of appeal authorized by Section 53069.4 of the Government Code shall be served upon the City Clerk.

D. Each party violating any provision of this chapter or any encroachment permit issued pursuant to this chapter shall be guilty of a separate offense for each and every day on which any such violation is committed, continued, or permitted by any such person.

E. In addition to any penalty, sanction, fine or imprisonment, any person violating the provisions of this chapter or any encroachment permit issued pursuant to this chapter shall be required to pay any and all expenses of enforcement including those costs necessary to inspect, remove and/or correct the violation. In addition to all remedies herein contained, the City may pursue all reasonable and legal means in collecting those sums authorized and due.

## **Chapter 12.09**

### **STREET TRENCH FEE**

#### Sections:

12.09.010 Title.

12.09.020 Definitions.

12.09.030 Trench restoration fee.

12.09.040 Establishment of fund.

12.09.050 Relocation of utilities required by City.

12.09.060 Permit violations.

12.09.070 Pavement condition index ratings.

12.09.080 Pavement life performance warranty.

12.09.090 Repair of sunken pavement over excavation.

12.09.100 Publicly bid City plans, field changes and blanket permits.

12.09.110 Coordination of excavations.

12.09.120 Moratorium.

12.09.130 Excavation within moratorium period.

12.09.140 Joint excavation.

12.09.150 Nontransferability of pavement life warranty.

12.09.160 Appeal.

#### **12.09.010 Title.**

This chapter shall be known as the "street trench fee ordinance."

#### **12.09.020 Definitions.**

For purposes of this chapter, the following definitions apply:

“Applicant” shall mean any owner who has submitted an application for a permit to excavate.

“Chapter” shall mean EGMC Chapter 12.09.

“City street” shall mean any public highway, road, street, avenue, alley, lane, drive, way, place, court or trail, which has been accepted, or is hereafter accepted, by the City Council into the City road system pursuant to Section 941 of the California Streets and Highways Code.

“Department” shall mean the Public Works Department of the City of Elk Grove.

“Director” shall mean the Public Works Director of the City of Elk Grove or his or her designee.

“Excavation” shall mean any opening in the paved surface or subsurface of the public right-of-way.

“Facility” or “facilities” shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, wells, and other appurtenances or tangible things that are located or are proposed to be located in the public right-of-way.

“Owner” shall mean any person, including any agency, department, or subdivision of the City, who owns any facility or facilities that are or are proposed to be installed or maintained in the public right-of-way.

“Permit” or “permit to excavate” shall mean a permit to perform an excavation as it has been approved or may be amended or renewed by the Department.

“Person” shall mean any natural person, corporation, partnership, or any governmental agency, department, or subdivision of the City, the state of California, or the United States of America.

“Public right-of-way” shall mean the paved area across, along, beneath, in, on, over, under, upon, and within the City streets, as they now exist or hereafter will exist and which are or will be under the permitting jurisdiction of the Public Works Department.

“Resurfacing” shall mean any repaving, overlay, seal or reconstruction which constructs a new pavement surface of greater than one inch thickness over the entire width of the street, excluding crack seals, not including micropaving, Class 1 to 3 slurry seals, cape seals, and chip seals.

“Trench influence area” shall mean an area three (3' 0") feet adjacent to the trench where the excavation occurs for trenches with four (4' 0") feet or greater of cover over

the utility facility from the paved surface, and one and one-half (1' 6") feet adjacent to the trench where the excavation occurs for trenches with less than four (4' 0") feet of cover over the utility facility from the paved surface.

**12.09.030 Trench restoration fee.**

At the time any permit is issued, improvement plan approved, or work performed that causes an excavation of a paved City street, the applicant shall pay a trench restoration fee, in addition to the fee required by the encroachment permit or other administrative fees. The fee shall be in the amount set forth on the trench cut fee schedules set forth at the end of this section, or such other amount as may be established by resolution of the City Council. A trench restoration fee shall not be required for the following excavations:

- A. In a City street that the City has scheduled for resurfacing either during the fiscal year (July 1st to June 30th), when the excavation permit is issued or during the immediately following fiscal year;
- B. In a City street where the pavement condition index (PCI), as defined by the City's Pavement Management System, is less than twenty-five (25) PCI on the date the excavation permit is issued;
- C. For work performed by and for the Department;
- D. For potholing to verify utility depth or location;
- E. Where work will include resurfacing of all or a significant portion of the City street where the excavation is made, provided that the Director approves the resurfacing;
- F. Made for a utility relocation required by the City to accommodate a proper governmental use of a City street;
- G. For owners possessing a valid pavement life performance warranty agreement with the City as set forth in EGMC Section 12.09.080;
- H. Trenchless excavations greater than three (3' 0") feet in depth of cover over the utility facility not requiring a significant surface incision greater than industry bore pit standards may be excluded at the discretion of the Director.

<b>Trench Cut Fee Schedule for Trenches Less Than Four Feet Deep</b>		
Major streets <sup>1</sup> or all streets within five years of construction or structural overlay	PCI <sup>2</sup> between 100 and 70	\$3.90 per S.F. longitudinal \$7.80 per S.F. transverse
Major	PCI between 69 and 26	\$2.20 per S.F. longitudinal \$4.40 per S.F. transverse

Major	PCI between 25 and 0	<b>No fee</b>
Other	PCI between 100 and 70	\$2.41 per S.F. longitudinal \$4.82 per S.F. transverse
Other	PCI between 69 and 26	\$1.18 per S.F. longitudinal \$2.36 per S.F. transverse
Other	PCI between 25 and 0	<b>No fee</b>

<sup>1</sup>Major = Thoroughfare and arterial roads as defined by the City Improvement Standards.

<sup>2</sup>PCI = Pavement Condition Index.

Fees do not apply to area outside of the vertical projection of the trench in a "T" cut restoration.

Longitudinal = Trench mostly parallel to the centerline of the ramp. Transverse = Trench mostly perpendicular to the centerline of the road.

<b>Trench Cut Fee Schedule for Trenches Four Feet Deep or Greater</b>		
Major streets <sup>1</sup> and streets within five years of construction or structural overlay	PCI <sup>2</sup> between 100 and 70	\$5.91 per S.F. longitudinal \$11.82 per S.F. transverse
Major	PCI between 69 and 26	\$3.34 per S.F. longitudinal \$6.68 per S.F. transverse
Major	PCI between 25 and 0	<b>No fee</b>
Other	PCI between 100 and 70	\$3.66 per S.F. longitudinal \$7.32 per S.F. transverse
Other	PCI between 69 and 26	\$1.80 per S.F. longitudinal \$3.60 per S.F. transverse
Other	PCI between 25 and 0	<b>No fee</b>

<sup>1</sup>Major = Thoroughfare and arterial roads as defined by the City Improvement Standards.

<sup>2</sup>PCI = Pavement Condition Index.

Fees do not apply to area outside of the vertical projection of the trench in a "T" cut restoration.

Longitudinal = Trench mostly parallel to the centerline of the ramp.

Transverse = Trench mostly perpendicular to the centerline of the road.

#### **12.09.040 Establishment of fund.**

All monies paid to the City pursuant to EGMC Section 12.09.030 shall be deposited in a special fund or funds and shall be expended only for the resurfacing, maintenance, administration, and protection of City streets where excavation has occurred after the effective date of adoption of the ordinance codified in this chapter.

#### **12.09.050 Relocation of utilities required by City.**

No fee or requirement authorized or imposed pursuant to this chapter shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any City street to relocate the facilities at no cost to the City, in the event that relocation is required by the City to accommodate a proper governmental use of the City street.

#### **12.09.060 Permit violations.**

No person who has violated any provision of this chapter shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on such person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the Director. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the City at law or equity.

#### **12.09.070 Pavement condition index ratings.**

The City shall perform periodic pavement condition surveys of all City streets and determine the pavement condition index (PCI) rating for each street. A PCI rating shall be assigned to discrete blocks of a street and the fees calculated for each block. The PCI report shall be published on an annual basis and made available for public review at the permit counter.

#### **12.09.080 Pavement life performance warranty.**

In lieu of paying a trench restoration fee pursuant to EGMC Section 12.09.030, an owner who has a valid franchise agreement with the City or is statutorily exempt from franchise requirements shall provide a written pavement life performance warranty in a form acceptable to the City. The warranty shall provide that in the event that subsurface material or pavement over or within the trench influence area becomes depressed,

broken, or otherwise fails at any time after the excavation has been completed until such time as the street surface is completely resurfaced with a structural overlay, the owner who performed the trench cut shall repair or restore such condition pursuant to the procedure set forth in EGMC Section 12.09.090. In the event that an owner who has a valid franchise agreement with the City or is statutorily exempt from franchise requirements fails or refuses to provide a written pavement life performance warranty, such owner shall pay the trench restoration fee set forth in EGMC Section 12.09.030.

**12.09.090 Repair of sunken pavement over excavation.**

If the subsurface material or pavement over or within the trench influence area becomes depressed or broken at any time within one (1) year after (A) the excavation has been completed and accepted and before resurfacing of the City street, where the owner has paid a trench restoration fee pursuant to EGMC Section 12.09.030, or (B) at any time prior to such time as the street surface is completely resurfaced with a structural overlay, where the owner has provided a pavement life performance warranty pursuant to EGMC Section 12.09.080, the owner shall, upon written notice from the Director, immediately inspect the depressed or broken area to ascertain the cause of the failure. The owner shall make repairs to the installation or backfill and have the pavement restored in the manner and within the time period specified by the Director. Additional inspection permit fees may be imposed as appropriate. A trench restoration fee shall not be charged for work performed under this section. If the pavement is not restored as specified by the Director, unless delayed by conditions beyond the owner's control, the Director may cause the work to be done after giving the owner twenty-four (24) hours final notice. The cost thereof, including any inspection costs and administrative overhead incurred by the City, shall be assessed against the owner. The owner shall remain responsible for any future repairs of that portion of pavement over the excavation that was repaired by the City for a period of one (1) year, where the owner has paid a trench restoration fee pursuant to EGMC Section 12.09.030, or at any time prior to such time as the street surface is completely resurfaced with a structural overlay, where the owner has provided a pavement life performance warranty pursuant to EGMC Section 12.09.080.

**12.09.100 Publicly bid City plans, field changes and blanket permits.**

Publicly bid City plans, field changes that alter the square footage of the trench surface area and blanket permits issued by the Director to any owner to make excavations for utility service connections, for the location of trouble in utility conduits or pipes and for making repairs thereto, or for emergency purposes shall be subject to all fees and requirements of this chapter. The owner shall report the amount of excavation to the permit counter and pay the required fees. Failure to report the excavation and pay the

required fees shall be considered a permit violation pursuant to EGMC Section 12.09.060.

#### **12.09.110 Coordination of excavations.**

Any owner installing facilities providing water, sewer, stormwater drainage, gas, electric, communication, video or other utility services in City streets shall participate in the American Public Works Association ("APWA") Utility Committee and prepare a utility master plan, in a format specified by the APWA Utility Committee, that shows all of the owner's planned major utility work in City streets for the coming year. Prior to applying for an excavation permit, any owner planning to excavate in City streets shall coordinate, to the extent practicable, with other owners to minimize damage to, and avoid undue disruption and interference with, the public use of City streets.

#### **12.09.120 Moratorium.**

Excavation in newly renovated City streets is prohibited for five (5) years after filing of a notice of completion or acceptance of a new street or structural overlay of an entire street except as follows:

- A. Emergency which endangers life or property;
- B. Repair or modification to prevent interruption of essential utility service;
- C. Relocation work that is mandated by City, state or federal legislation;
- D. Service for buildings where no other reasonable means of providing service exists, as determined by the Director;
- E. In a City street that the City has scheduled for resurfacing either during the fiscal year (July 1st to June 30th) when the excavation permit is issued or during the immediately following fiscal year and the work takes place prior to the resurfacing;
- F. For potholing to verify utility depth or location;
- G. Trenchless excavations greater than three (3' 0") feet in depth of cover over the utility facility not requiring a significant surface incision greater than industry bore pit standards may be allowed at the discretion of the Director;
- H. Other situations deemed by the Director to be in the best interest of the general public.

#### **12.09.130 Excavation within moratorium period.**

Where a permit is issued to excavate during the five (5) year period after filing of a notice of completion or acceptance of a new street or structural overlay of an entire



street, payment of the trench restoration fee described in EGMC Section 12.09.030 will be required regardless of whether the owner has executed a pavement life performance warranty.

**12.09.140 Joint excavation.**

Whenever applicants propose major work in the same block, the Department shall condition permits for such work in a manner that maximizes coordination and minimizes the total period of construction. Such work may be conditioned to require the applicants to participate in a single excavation and pay their pro rata share of the work. Applicants may seek a waiver of the joint excavation requirements with respect to a particular excavation. Within thirty (30) days of receipt of a written request for a waiver, the Director shall render a decision upon such a request, taking into account the impact of the proposed excavation on the neighborhood, the applicant's need to provide services to a property or area, facilitating the deployment of new technology as directed pursuant to official City policy, and the public health, safety, welfare, and convenience.

**12.09.150 Nontransferability of pavement life warranty.**

Pavement life warranty agreements are not transferable or assignable.

**12.09.160 Appeal.**

A person directly and adversely affected by a decision made by the Director pursuant to the provisions of this chapter may appeal the Director's decision by filing a written notice of appeal pursuant to EGMC Chapter 1.11 no later than ten (10) business days after receiving notice of the Director's decision.

**Chapter 12.12**

**OBSTRUCTION OF CORNERS**

Sections:

12.12.010 Obstructions at public street intersections and intersection elbows.

12.12.020 Obstructions at private driveways and public streets.

12.12.030 Street right-of-way line defined.

12.12.040 Exceptions.

12.12.050 Enforcement.

## 12.12.060 Scope.

### **12.12.010 Obstructions at public street intersections and intersection elbows.**

It is unlawful to install, set out or maintain or to allow the installation, setting out or maintenance, on property at any corner formed by intersecting streets or intersection elbows within the City, any sign, hedge, shrubbery, natural growth, fence or other obstruction to the view higher than two feet, six (2' 6") inches above either the nearest pavement surface or the nearest traveled roadway (where there is no pavement) within that triangular area between the street right-of-way lines and a diagonal line joining points on the street right-of-way lines thirty (30' 0") feet from the point of their intersection, or in the case of rounded corners, the triangular area between the tangents to the curve and a diagonal line joining points on the tangent thirty (30' 0") feet from the point of their intersection. In the case of intersection elbows, forty (40' 0") foot lengths instead of thirty (30' 0") foot lengths are applicable. The tangents referred to are those at the beginning and at the end of the curve at the corner.

### **12.12.020 Obstructions at private driveways and public streets.**

It is unlawful to set out, install or maintain, or to allow the setting out, installation, or maintenance of any sign, hedge, structure, natural growth, fence, or other obstruction to the view higher than two feet, six (2' 6") inches above the nearest pavement surface (or traveled area where no pavement exists) on property adjacent to any private road or driveway intersecting a public street, within a triangular area formed by the edge of the driveway, the street right-of-way line, and a line connecting two (2) points, one of which is on the right-of-way line ten (10' 0") feet from the edge of the driveway, and the other of which is on the edge of the driveway fifteen (15' 0") feet back of the right-of-way line measured perpendicular to the right-of-way line in a direction away from the street.

### **12.12.030 Street right-of-way line defined.**

Where the street right-of-way line is nearer to the centerline of the street than any existing sidewalk, the street right-of-way line shall be assumed to be coincidental with the back edge of the sidewalk for determining the triangular area for which this chapter controls obstructions to visibility. Where there is no sidewalk but the street right-of-way line is nearer to the centerline of the highway than any existing curb and gutter, the street right-of-way line shall be assumed to be coincidental with the back edge of the curb and gutter for determining the triangular area for which this chapter controls obstructions to visibility.

#### **12.12.040 Exceptions.**

The foregoing provisions shall not apply to the following:

A. Permanent buildings;

B. Public utility poles;

C. Trees trimmed to the trunk so as to provide a clear open space between pavement grade and a plane six (6' 0") feet higher, pavement grade being defined as either:

1. The nearest pavement surface; or

2. The nearest traveled roadway (where there is no pavement);

D. Saplings;

E. Fences of a type which in no way obstruct vision;

F. Official signs or signals;

G. Places where the contour of the ground is such that there can be no cross-visibility at the intersection;

H. Signs mounted so as to provide a clear, open space (except for supporting members) of ten (10' 0") feet or more above the ground and whose supports do not constitute an obstruction as defined in EGMC Section 12.12.030;

I. Fences as may be required by the Federal Housing Administration or other home mortgage lending agency within subdivision corner lots as defined in EGMC Title 22, which have rear yards contiguous to a highway designated by the Public Works Department as a major highway with one hundred (100' 0") feet of right-of-way, or designated by the Department as a major arterial with eighty (80' 0") feet of right-of-way or a frontage road;

J. Any passenger motor vehicle not to exceed six (6' 0") feet in height parked either temporarily or on display for sale on property zoned other than residential single-family, residential multiple-family or on other residential property.

#### **12.12.050 Enforcement.**

A. This chapter shall be enforced by the Public Works Department. The Public Works Director of the Public Works Department or his or her authorized representative may investigate violations of this chapter, give such notices as may be required to carry out this chapter, and perform such other duties in connection with the enforcement of this chapter as may be appropriate.

B. Remedies. Any obstruction maintained in violation of this chapter may be deemed a public nuisance, whether erected before or after July 1, 2000, or, in the case of elbow intersections, whether erected before or after July 1, 2000, and upon failure to abate the same within fifteen (15) days after posting upon the premises of a notice to abate the nuisance signed by the Public Works Director of the Public Works Department, or his or her authorized representative, and after sending a copy of the notice to abate by registered mail addressed to the owner of record, as shown on the most recent assessment roll of the City, to the address as shown on the assessment roll, the Director, or his or her authorized representative, may enter upon the premises and remove or eliminate the obstruction. In such event, the cost to the City of the abatement of the nuisance shall be a lien upon the premises, provided a claim therefor be filed within the time and in the manner as prescribed in Section 1193.1 of the Code of Civil Procedure. The cost of such abatement shall, in addition, be a personal obligation against the owner of the premises upon which the nuisance was maintained, recoverable by the City in an action before any court of competent jurisdiction.

**12.12.060 Scope.**

No obstruction to cross-visibility shall be deemed to be excepted from the application of this chapter because of its being in existence at the time of the adoption hereof, unless expressly exempted by the terms of EGMC Section 12.12.040.

**Chapter 12.16**

**HOUSE NUMBERS ON CURBS**

Sections:

12.16.010 Permit required.

12.16.020 Other requirements.

12.16.030 Applications.

12.16.040 Prior approval required.

12.16.050 Standards.

12.16.060 Liability.

12.16.070 Conditions.

12.16.080 Employee list.

12.16.090 Cancellation.

12.16.100 Appeal.

12.16.110 Penalty.

**12.16.010 Permit required.**

It is unlawful for any person to paint or cause to be painted any house numbers on street curbs within the City without a valid permit, issued as provided in this chapter. As used in this section, the words "paint" or "cause to be painted" include any means by which house numbers are affixed or applied to a street curb, including but not limited to paint of any kind applied in any manner and decals of any type which are designed to adhere to a street curb. As used in this chapter, "person" includes any natural person and any other entity as defined in EGMC Section 1.01.030.

**12.16.020 Other requirements.**

No permit shall be issued to any person intending to charge a fee or solicit contributions until he has obtained either a business license or a charitable solicitations permit, or both, in accordance with the requirements of this code, depending upon whether a business license or charitable solicitations permit, or both, are required.

**12.16.030 Applications.**

To obtain a permit pursuant to the requirements of this chapter, an application shall be filed with the Public Works Department containing the following information:

- A. The location or area in which the applicant intends to paint house numbers on curbs;
- B. The specific days on which the applicant intends to paint curbs;
- C. Such other relevant information as is determined to be necessary by the Public Works Department.

**12.16.040 Prior approval required.**

Prior to painting house numbers, the permit holder shall obtain the written consent of an adult occupant of the abutting property. The form used for obtaining consent shall also specify the exact fee or donation which is expected to be paid. The silence of the occupant or the failure or omission of any occupant to complete or sign the form or to in any other manner indicate consent or refusal to have house numbers painted on the curb shall not constitute consent or in any way be relied on by the permit holder as

indicating consent. No person other than an adult occupant who has consented in writing shall have any responsibility for payment of the fee or donation.

#### **12.16.050 Standards.**

The Public Works Department shall establish standards which shall govern the appearance of house numbers on curbs and the manner in which they may be applied, including but not limited to standards relating to the size, color and location of the numbers and the materials used to apply the numbers. The standards shall be provided in writing to every person to whom a permit is issued and the permit holder shall sign a copy of the standards which includes a statement indicating that the permit holder has read and understands the standards and will follow them in applying curb numbers. The signed copy shall be retained in the Department's files relating to the applicant.

#### **12.16.060 Liability.**

The issuance of a permit hereunder shall not be construed as imposing any responsibility or liability on the City or any of its officers or employees for claims for property damage or personal injury in any way arising out of, or relating to, the house number painting activities of the permit holder. It is unlawful for the permit holder to in any way represent or imply to anyone that the permit holder is a representative, or is acting for or on behalf of, the City or any other public agency in offering to paint house numbers on curbs.

#### **12.16.070 Conditions.**

The issuance of a permit pursuant to this chapter shall be conditioned on compliance by the applicant with all of the provisions of this chapter and shall be subject to any special conditions which the Public Works Department determines to be necessary for the purpose of protecting the condition and use of City rights-of-way and the public improvements located thereon and the health, safety and general welfare of the property owners abutting on the rights-of-way on which the applicant intends to paint house numbers. Such special conditions may include, but are not limited to, limits on the hours during which the permit holder may solicit orders and the hours during which the house number painting activity may take place and a permit expiration date which shall be not later than the sixtieth (60) day following the date on which the permit is issued. It is unlawful for the permit holder or any employee or representative of the permit holder to solicit orders or engage in house number painting activities in violation of any such special conditions. Special conditions applicable to a permit shall be specified in writing on the permit or in a written attachment thereto.

**12.16.080 Employee list.**

Before issuance of any permit, the applicant shall file with the Public Works Department a list of the names and addresses of all persons who will be in the employ of, or act as representatives of, the permit holder for the purpose of carrying on the activities authorized by the permit. The permit holder shall notify the Public Works Department in writing of any additions to the list within seventy-two (72) hours following the addition of any new employee or representative.

**12.16.090 Cancellation.**

A permit may be cancelled by the Public Works Department if it is determined that the permit holder, his employees or his representatives have violated any of the requirements of this chapter or have engaged in any other conduct or activity on the basis of which it is determined that the permit should be cancelled for the protection of the public health, safety or general welfare. Notice of cancellation shall be in writing and shall specify the reasons for cancellation. The cancellation shall be effective immediately upon personal delivery to the permit holder or his authorized representative. If reasonable efforts to effect personal delivery are unsuccessful, cancellation shall be effective upon the mailing of the required notice to the permit holder's address as specified in his application. Such mailed notice shall be effective, notwithstanding any change in the permit holder's address, unless the permit holder has notified the Public Works Department in writing of any such change of address.

**12.16.100 Appeal.**

The cancellation of a permit as provided in EGMC Section 12.16.090 shall be final on the expiration of ten (10) days following the effective date of the revocation unless the permit holder files a written notice of appeal Pursuant to EGMC Chapter 1.11.

**12.16.110 Penalty.**

Violation of any requirement or prohibition in this chapter is a misdemeanor and is punishable as provided in EGMC Chapter 1.04.

**Chapter 12.20**

**UNDERGROUND UTILITY DISTRICTS**

Sections:

12.20.010 Definitions.

12.20.020 Public hearing by Council.

12.20.030 Council may designate underground utility districts by resolution.

12.20.040 Unlawful acts.

12.20.050 Exception, emergency or unusual circumstances.

12.20.060 Other exceptions.

12.20.070 Notice to property owners and utility companies.

12.20.080 Responsibility of utility companies.

12.20.090 Responsibility of property owners.

12.20.100 Responsibility of City.

12.20.110 Extension of time.

**12.20.010 Definitions.**

Whenever in this chapter the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

A. "Clerk" shall mean the duly appointed and acting City Clerk of the City of Elk Grove.

B. "Public Works Director" shall mean the duly appointed and acting Public Works Director of the City of Elk Grove;

C. "Person" shall mean and include individuals, firms, corporations, partnerships, and their agents and employees;

D. "Poles, overhead wires and associated overhead structures" shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, transformers, insulators, cutouts, switches, communication circuits, appliances, attachments and appurtenances located above-ground within a district and used or useful in supplying electric, communication or similar or associated service;

E. "Underground utility district" or "district" shall mean that area in the City within which poles, overhead wires, and associated overhead structures are prohibited as such area is described in a resolution adopted pursuant to the provisions of EGMC Section 12.20.030.



F. "Utility" shall include all persons or entities supplying electric, communication or similar or associated service by means of electrical materials or devices.

**12.20.020 Public hearing by Council.**

The Council may from time to time call public hearings to ascertain whether the public necessity, health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within designated areas of the City and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. The Clerk of the Council shall notify all affected property owners as shown on the last equalized assessment roll and utilities concerned by mail of the time and place of such hearings at least ten (10) days prior to the date thereof. Each such hearing shall be open to the public and may be continued from time to time. At each such hearing all persons interested shall be given an opportunity to be heard. The decision of the Council shall be final and conclusive.

**12.20.030 Council may designate underground utility districts by resolution.**

If after any such public hearing the Council finds that the public necessity, health, safety or welfare requires such removal and such underground installation within a designated area, the Council shall, by resolution, declare such designated area an underground utility district and order such removal and underground installation. Such resolution shall include a description of the area comprising such district and shall fix the time within which such removal and underground installation shall be accomplished and within which affected property owners must be ready to receive underground service. A reasonable time shall be allowed for such removal and underground installation, having due regard for the availability of labor, materials and equipment necessary for such removal and for the installation of such underground facilities as may be occasioned thereby.

**12.20.040 Unlawful acts.**

Whenever the Council creates an underground utility district and orders the removal of poles, overhead wires and associated overhead structures therein as provided in EGMC Section 12.20.030, it shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue, employ or operate poles, overhead wires and associated overhead structures in the district after the date when said overhead facilities are required to be removed by such resolution, except as said overhead facilities may be required to furnish service to an owner or occupant of property prior to the performance by such owner or occupant of the underground work necessary for such owner or occupant to continue to receive utility service as provided in EGMC Section 12.20.090, and for such reasonable time required to remove said facilities after said work has been performed, and except as otherwise provided in this chapter.

### **12.20.050 Exception, emergency or unusual circumstances.**

Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period not to exceed ninety (90) days without authority of the Council in order to provide emergency service. The Council may grant special permission, on such terms as the Council may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures.

### **12.20.060 Other exceptions.**

This chapter and any resolution adopted pursuant to EGMC Section 12.20.030 shall, unless otherwise provided in such resolution, not apply to the following types of facilities:

- A. Any City facilities or equipment installed under the supervision and to the satisfaction of the Public Works Director;
- B. Poles or electroliers used exclusively for street lighting;
- C. Overhead wires (exclusive of supporting structures) crossing any portion of a district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited;
- D. Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand five hundred (34,500V) volts;
- E. Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;
- F. Antennas, associated equipment and supporting structures used by a utility for furnishing communication services;
- G. Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, switching cubicles, and concealed ducts;

H. Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

**12.20.070 Notice to property owners and utility companies.**

Within ten (10) days after the effective date of a resolution adopted pursuant to EGMC Section 12.20.030, the Clerk shall notify all affected utilities and all persons owning real property within the district created by said resolution of the adoption thereof. Said Clerk shall further notify such affected property owners of the necessity that, if they or any person occupying such property desire to continue to receive electric, communication, or similar or associated service, they or such occupant shall provide all necessary facility changes on their premises and rights-of-way so as to receive such service from the lines of the supplying utility or utilities at a new location, subject to applicable rules, regulations and tariffs of the respective utility or utilities.

Notification by the Clerk shall be made by mailing a copy of the resolution adopted pursuant to EGMC Section 12.20.030, together with a copy of this chapter, to affected property owners as such are shown on the last equalized assessment roll and to the affected utilities.

**12.20.080 Responsibility of utility companies.**

If underground construction is necessary to provide utility service within a district created by any resolution adopted pursuant to EGMC Section 12.20.030, the supplying utility shall furnish that portion of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs.

**12.20.090 Responsibility of property owners.**

Every person owning, operating, leasing, occupying or renting a building or structure within a district shall perform construction and provide that portion of the service connection on his property between the facilities referred to in EGMC Section 12.20.080 and the termination facility on or within said building or structure being served, all in accordance with applicable rules, regulations and tariffs of the respective utility or utilities. If any property owner, after due notice, refuses to comply within a reasonable time to effect the removal or preparation in accordance with the applicable rules of the utility involved, the City may cause the work to be done and assess the costs of the work against the property, and the assessment shall become a lien against the property. The assessment may be collected at the same time and in the same manner as ordinary City *ad valorem* taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for these taxes. All laws applicable to the levy, collection, and enforcement of City *ad valorem* taxes shall be applicable to the assessment.

### **12.20.100 Responsibility of City.**

The City shall remove at its own expense all City-owned equipment from all poles required to be removed hereunder in ample time to enable the owner or user of such poles to remove the same within the time specified in the resolution enacted pursuant to EGMC Section 12.20.030.

### **12.20.110 Extension of time.**

In the event that any act required by this chapter or by a resolution adopted pursuant to EGMC Section 12.20.030 cannot be performed within the time provided on account of shortage of materials, war, restraint by public authorities, strikes, labor disturbances, civil disobedience, or any other circumstances beyond the control of the actor, then the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitation.

## **Chapter 12.24**

### **STREET NUMBERING SYSTEM**

Sections:

12.24.010 Purpose.

12.24.020 Designating authority.

12.24.030 Names.

12.24.040 Numbering.

12.24.050 Specifications.

12.24.060 Application.

12.24.070 Penalty.

#### **12.24.010 Purpose.**

It is hereby found that the public interest, safety, welfare and convenience require the establishment of a numbering system of street addresses under a uniform plan within the City. For the accomplishment of this objective, there is hereby established a uniform numbering system in order to promote more effective law enforcement, facilitate rapid response to emergency calls for fire suppression, medical, and other purposes, improve

the delivery of goods and services, and otherwise promote the economic improvement of the community.

#### **12.24.020 Designating authority.**

Streets within the City shall be named by, and properties abutting such streets and roads shall be assigned numbers by, the Public Works Director or his or her designee pursuant to the standards contained in EGMC Sections 12.24.030 and 12.24.040.

#### **12.24.030 Names.**

The Director shall assign the following name designations within the City:

A. Except as hereinafter provided, the term "street" shall be applied to streets which generally extend in a northerly and southerly direction, regardless of width.

B. Except as otherwise provided, the term "avenue" shall be applied to streets which generally extend in an easterly and westerly direction, regardless of width.

C. Except as hereinafter provided, the term "drive" shall be applied to streets which are forty-six (46' 0") feet or greater in width, and are not designated as streets or avenues.

D. The term "way" shall be applied to streets which are forty-two (42' 0") feet in width, and are not designated streets or avenues.

E. The term "road" shall be applied to streets which are sixty (60' 0") feet or greater in width, and are situated in a rural area of the City, as identified in the City General Plan.

F. The terms "court" or "place" shall be applied to streets which terminate in a cul-de-sac with no intermediate access.

G. The term "circle" shall be applied to streets which begin and terminate in the same street, with no intermediate access.

H. The term "boulevard" shall be applied to streets which are major traffic thoroughfares.

#### **12.24.040 Numbering.**

The Director shall assign number to properties abutting streets within the City in accordance with the following criteria:

There is hereby established a baseline for assigning such numbers for the north-south grid, which is the American River. Numbers shall increase in magnitude from the American River in both northerly and southerly directions generally in accordance with the distance from the river.

There is hereby established a baseline for assigning such numbers south of the American River, for an east-west grid, which is the projection of a line that lies 1,320 feet west of the section line common to Section 4 and 5 Township 5 North, Range 4 East, M.D.B. & M. Numbers shall increase in magnitude from that baseline in both easterly and westerly directions generally in accordance with the distance from the baseline. Numbers lying west of the baseline shall be ascribed a letter "W" as a suffix to the property number.

There is hereby established a baseline for assigning such numbers north of the American River, for an east-west grid, which is the projection of a line that lies 800 feet east of the section line common to Section 19 and 20 Township 10 North, Range 5 East, M.D.B. & M. Numbers shall increase in magnitude from that baseline in both easterly and westerly directions generally in accordance with the distance from the baseline. Numbers lying west of that baseline shall be ascribed a letter "W" as a suffix to the property number.

#### **12.24.050 Specifications.**

The Director shall be authorized to formulate, promulgate and enforce specifications pertaining to the size, color and type of numbers placed upon properties abutting streets within the City, together with standards regulating the numbering of multiple structures upon the same property. Such specifications and standards shall be formulated for the purpose of facilitating the identification and location of structures and land uses by persons searching for same from the streets, eliminating or reducing the necessity for entry of property by persons conducting such searches.

#### **12.24.060 Application.**

Except as hereinafter provided, the standards contained in this chapter shall govern assignment by the Director of street designations and numbers pursuant to EGMC Sections 12.24.030 and 12.24.040 for all parcels, lots and streets within the City, including, but not limited to, those established after the date on which the ordinance codified in this chapter becomes effective.

All street designations and property numbers in existence preceding the effective date of the ordinance codified in this chapter which are consistent with the standards prescribed by EGMC 12.24.030 and 12.24.040 shall be deemed to have been designated by the Director pursuant to the provisions of this chapter.

The standards for designating streets and assigning numbers established by EGMC Sections 12.24.030 and 12.24.040 shall not be applicable to a particular lot or parcel of land which is not numbered or is numbered in a manner inconsistent with the standards contained in EGMC Sections 12.24.030 and 12.24.040 until thirty (30) days after:

A. The Director designates such streets or numbers such property in accordance with such standards; and

B. The Director has mailed written notice of such designation or numbering, postage prepaid, to the record owner and occupant of the property so numbered or which abuts each street so designated.

**12.24.070 Penalty.**

It shall be the responsibility of both owners and occupants of property abutting roads within the City to post numbers upon such property in accordance with those designated by the Director.

Pursuant to the provisions of Section 25132 of the Government Code, an owner or occupant of property abutting a street within the City who fails, within ten (10) days following mailing of written notice to do so, to post a number upon such property corresponding to the number designated by the Director shall be guilty of an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**TITLE 13**

**WATERCOURSES**

**Chapters:**

**13.04 Obstructions**

**13.28 Enforcement**

**Chapter 13.04**

**OBSTRUCTIONS**

**Sections:**

13.04.010 Definitions.

13.04.020 Permit required.

13.04.030 Change of direction.

13.04.040 Diverting drainage.

13.04.050 Permit required for obstruction.

13.04.060 Obstruction of flow unlawful – Exception.

13.04.070 Responsibility of property owner.

13.04.080 Application.

13.04.090 Issuance.

13.04.100 Unsatisfactory work.

13.04.110 Delegation of authority.

**13.04.010 Definitions.**

The following definitions are taken from the pamphlet entitled “Letters, Symbols and Glossary for Hydraulics” prepared by the American Society of Civil Engineers in their Manual of Engineering Practices No. 11 adopted October 13, 1935:

A. “Channel” means an elongated open depression in which water may or does flow;

B. “Conduit” is a general term for any channel intended for the conveyance of water, whether open or closed, or any container for flowing water;

C. “Ditch” means an artificial channel usually distinguished from a canal by its smaller size;

D. “Drainage” means:

1. The process of removing surplus ground or surface water by artificial means;
2. The manner in which the waters of an area are removed;
3. The area from which waters are drained, a drainage basin;

**13.04.020 Permit required.**

It is unlawful for any person to interfere with, destroy or use in any manner whatsoever any levee, embankment, channel, dam, reservoir, rain or stream gauges, telephone line, piling, or other stream protection work constructed by the City or by any drainage district organized under the laws of the state without having received a written permit therefor from the City Council, which permit shall be revocable whenever, in the opinion of the City Council, the public interest and welfare require the revocation thereof. Application for the use of any levee, embankment, channel, dam or reservoir shall be made to the



City engineer, setting forth the particular use desired and the purpose and duration thereof, and the City engineer shall investigate such applications and make his recommendations thereon to the City Council, and the City Council may impose such terms and conditions as may be necessary to ensure the proper maintenance of the property for flood control and drainage purposes.

**13.04.030 Change of direction.**

It is unlawful for any person to place on or cause to be placed in any drainage ditch, watercourse, channel or conduit or upon any property over which the City, or any drainage district, has an easement for flood control or drainage purposes duly recorded in the Office of the Sacramento County Clerk-Recorder, any wires, fence, building or other structure, or any refuse, rubbish, tin cans or other matter that may impede, retard, or change the direction of the flow of water in such drainage ditch, watercourse, channel or conduit, or that will catch or collect debris carried by such water, or is placed where the natural flow of the storm and flood waters would carry the same downstream to the damage and detriment of either private or public property adjacent to the drainage ditch, watercourse, channel or conduit.

**13.04.040 Diverting drainage.**

It is unlawful for any person to change the drainage on his property so as to divert the drainage to the nearest public road without first obtaining a permit so to do from the City Council.

**13.04.050 Permit required for obstruction.**

It is unlawful for any person to fill or obstruct or maintain any fill or obstruction in any drainage ditch, watercourse, channel or conduit carrying storm or drainage water unless a permit so to do has been obtained from the City Council.

**13.04.060 Obstruction of flow unlawful – Exception.**

It is unlawful for any person to do anything to any drainage ditch, watercourse, channel or conduit carrying storm or drainage water that will in any manner obstruct or interfere with the flow of water through such ditches, watercourses, channels or conduits unless a permit so to do has been obtained from the City Council.

**13.04.070 Responsibility of property owner.**

Every property owner, whether it be a person or his lessee or tenant, through whose property a drainage ditch, watercourse, channel or conduit carrying storm or drainage water passes, shall keep and maintain the same free from obstacles that will prevent or retard the flow of water through such ditch, watercourse, channel or conduit except that

same may be filled or altered if a permit so to do has been first obtained pursuant to this chapter.

#### **13.04.080 Application.**

Any person desiring to obtain a permit as hereinabove provided shall file an application in writing therefor with the City Council, which shall state:

A. The name and address of the applicant, and if the applicant is a corporation, the names and addresses of the principal officers thereof;

B. The place where such work is to be done;

C. Description of the work to be done, together with the materials to be used therefor, accompanied by a diagram of the proposed work and such other information as the City Council may require to carry out the purposes of this chapter;

D. Total estimated cost of the proposed work;

E. That if the permit is granted, the applicant agrees that all work specified in the application will be commenced within thirty (30) days after the permit is granted and will be pursued to its completion with reasonable diligence.

#### **13.04.090 Issuance.**

A. If the City Council determines that the work 1) will not interfere with the flow of natural storm waters and 2) will not injure adjoining property, the City Council shall issue a permit to do the proposed work in the manner specified in the application, or in such manner as the Council may determine as required to carry out the purposes of this chapter, and upon payment of the fees required by this section.

B. The applicant at the time of obtaining any such permit shall pay to the City an amount equal to two (2%) percent of the estimated cost of the work to be done as indicated by the permit if the estimated cost is One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars or less, and in addition, an amount equal to one and one-half (1.5%) percent of the estimated cost of the work in excess of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars as a permit fee to cover the ordinary inspection cost of the work to be performed; provided, however, that in no event shall the permit fee herein required to be paid be less than One and no/100<sup>ths</sup> (\$1.00) Dollar. In addition, if it is determined by the agency charged with inspection that any special test such as, but not limited to, soil tests, compaction tests, materials tests, or other special tests are required, then the permittee shall pay to the City the actual costs of such tests.

### **13.04.100 Unsatisfactory work.**

If the work is not done in accordance with the terms of the permit and contrary to the instructions of the inspector, then the applicant or permittee is to be considered to have violated the terms of this chapter and shall be subject to the terms of EGMC Section 13.04.080 which shall be enforced pursuant to the provisions of EGMC Chapter 1.04. Furthermore, the work must be reconstructed pursuant to the terms of the original permit. If not so done by the applicant or permittee, and if essential to the health, welfare or safety of the general public, then the City Council may order the work to be done, which work must be paid for by the permittee or applicant, and if not paid shall be a lien against his property.

### **13.04.110 Delegation of authority.**

The City Council may delegate any or all of its authority to the Public Works Director or his or her designee as it may see fit. Whenever the Council has so delegated its authority, then the Public Works Director shall be considered as acting for and on behalf of the City Council.

## **Chapter 13.28**

### **ENFORCEMENT**

Sections:

13.28.010 Penalties.

13.28.020 Special event exemption.

#### **13.28.010 Penalties.**

A. Notwithstanding the provisions of EGMC Chapter 1.04 and unless otherwise stated in this title, a violation of any of the provisions of this title, or failure to comply with any of the regulatory requirements of this title, shall be punishable as follows:

1. A first violation of any of the provisions of this title is punishable as an infraction; and
2. A second or subsequent violation of the same provisions of this title committed within seventy-two (72) hours of the previous violation shall be a misdemeanor.

### **13.28.020 Special event exemption.**

This title or any chapter or section therein or portion thereof may, by resolution duly adopted by the City Council, be made inapplicable during the period of the conduct of a festival, commemoration, celebration, ceremony, or other similar special event, upon such terms and conditions as the City Council may prescribe within the resolution.

## **TITLE 14**

### **AGRICULTURAL ACTIVITIES AND WATER USE AND CONSERVATION**

#### **14.05 Agricultural Activities**

#### **14.10 Relative Water Requirements of Commonly Used Plants**

#### **Chapter 14.05**

### **AGRICULTURAL ACTIVITIES**

Sections:

14.05.010 Purpose.

14.05.020 Definitions.

14.05.050 Policies.

14.05.200 Boundaries.

14.05.300 Notification.

14.05.400 Complaints.

#### **14.05.010 Purpose.**

The City of Elk Grove City Council, through adoption of the General Plan in 2003, established policies relating to agricultural uses within the City. Agricultural uses, even when conducted by the most responsible operator, can result in noise, odor, dust and other impacts which are tolerated and expected by similar operators. However, residents of adjacent property may not be as tolerant of these activities and may

perceive them as a nuisance to the enjoyment of their home and property. It is important that adjacent property owners understand that those elements of agricultural production which may not be considered as desirable are acceptable in the furtherance of the General Plan goals for preservation of agricultural production. Therefore, it is essential that notification be provided to residents of property located near properties designated for agricultural use that these agricultural uses are encouraged, that accepted agricultural practices may continue, and that efforts to prohibit, ban, restrict, or otherwise eliminate established agricultural uses will not be favorably received. Therefore, the notification and mediation procedures to accomplish this goal are hereafter set forth.

#### **14.05.020 Definitions.**

“Agricultural activity, operation, or facility or appurtenances thereof” shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture; the raising of livestock, fur-bearing animals, fish, or poultry; and any practices performed by a farmer or on a farm as incidental to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

“Agricultural land” shall mean all that property within the boundaries of the City of Elk Grove currently designated Rural Residential, Rural Agriculture or General Agriculture in the City of Elk Grove General Plan. In addition, those properties zoned AG, AR-10, AR-5, AR-2, or AR-1 will also be considered “agricultural land” for the purpose of this chapter because the Zoning Code allows general agricultural uses in these zones.

“Director” shall mean the Planning Director of the Planning Department of the City of Elk Grove.

#### **14.05.050 Policies.**

A. No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has been in operation for more than three years if it was not a nuisance at the time it began.

B. Subsection (A) of this section shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof, obstructs the free passage or use, in the customary manner, or any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.

C. This section shall not invalidate any provisions contained in the Health and Safety Code, Fish and Game Code, Food and Agricultural Code, or Division 7 (commencing with Section 13000) of the Water Code, if the agricultural activity, operation, facility, or appurtenances thereof, constitutes a nuisance, public or private, as specifically defined or described in any such provisions.

#### **14.05.200 Boundaries.**

This chapter shall apply to all properties within the boundaries of the City of Elk Grove.

#### **14.05.300 Notification.**

When the City Council elects to provide notice of the "Right to Farm Ordinance", the notice may be in the form of a brochure, flyer, or notice recorded for the purposes of disclosure in the title report, or some similar condensed document which outlines the general provisions of the ordinance and includes, substantially, the following statement:

The City of Elk Grove, upon incorporation in July 2000, adopted a Right-to-Farm Ordinance. The purpose of this chapter is to ensure that established agricultural operations which are operated in a manner consistent with proper and accepted customs and standards be allowed to continue. Residents of property which are adjacent to land which is zoned for agricultural use or which is designated on the General Plan for agricultural use may be subject to inconveniences or discomfort from the pursuit of agricultural operations, including but not limited to cultivation, plowing, spraying, fertilizing, pruning, and harvesting which occasionally generates dust, smoke, noise and odor; from the noise, odors, and other features attributed to the keeping of farm animals; and from the conduct of farming activities during typical working hours, as well as late in the evening, early in the morning, or twenty-four (24) hours a day during certain times and seasons of the year. The Elk Grove City Council has designated areas within its boundaries for agricultural uses and has adopted policies supporting continued agricultural production. Residents within these areas and on adjacent property should be prepared to accept such inconvenience and recognize that these uses will occur. If, however, an agricultural operation is being conducted in a manner which does not appear to be consistent with accepted agricultural practices, any person may file a complaint with Community Enhancement.

B. For the purpose of mailing such notice the Director may utilize addresses from Postal Service ZIP Code lists which include all property designated for agricultural use on the General Plan and property adjacent to property so designated. Failure to receive such notice shall not relieve any property owner or resident from any of the terms of this chapter.

#### **14.05.400 Complaints.**

From time to time, complaints may be raised by residents that agricultural activities are not being conducted in a reasonable manner, or that the operator of an agricultural operation is not using currently acceptable methods in the conduct of the farm. Therefore, a procedure is hereby established whereby any property owner or resident may file a complaint with Community Enhancement. Complaints must be in writing and must specify the property on which the activity is occurring, the nature of the unacceptable activity, dates or times when the activity occurs, and any other pertinent information which may assist in the resolution of the dispute.

### **Chapter 14.10**

#### **RELATIVE WATER REQUIREMENTS OF COMMONLY USED PLANTS**

Sections:

14.10.010 Purpose.

14.10.020 Applicability.

14.10.030 Implementation.

14.10.040 Exceptions.

14.10.050 Definitions.

14.10.060 Submittals.

14.10.070 Irrigation system design criteria.

14.10.080 Plant selection.

14.10.090 Certificate of compliance.

14.10.100 Model home landscape criteria.

14.10.110 Soil infiltration rates.

14.10.120 Relative water requirements of commonly used plants.

#### **14.10.010 Purpose.**

The purpose of these requirements is to define the standards and procedures for the design, installation, and management of landscapes in order to utilize available plant, water, land, and human resources to the greatest benefit of the people of the City of Elk Grove. Skillful planting and irrigation design, appropriate use of plants, and intelligent landscape management can assure landscape development that avoids excessive water demands and that is less vulnerable to periods of severe drought.

#### **14.10.020 Applicability.**

These requirements shall be applicable to new and rehabilitated landscaping for industrial, commercial, and institutional developments; to parks and other public recreational areas; to multifamily residential, common areas and model homes; and City road medians and corridors; all as defined in the Zoning Ordinance of the City of Elk Grove (Title 23, Elk Grove Municipal Code); provided, however, that these requirements shall not be applicable to the residential portions of developments which are subject to a development agreement entered into pursuant to Sections 65864 et seq. of the Government Code if such development agreement was in effect as of January 1, 1989.

#### **14.10.030 Implementation.**

To assure that the purpose of this chapter is carried out, improvement plans and building permits will not be approved until a submittal conforming to the specific provisions of this chapter shall have been approved by the City of Elk Grove Department of Public Works.

#### **14.10.040 Exceptions.**

The City Council of the City of Elk Grove ("Council") or its designee may authorize conditional exceptions to any of the design and improvement standards in this chapter, unless the standard specifically states that an exception cannot be granted. Such exceptions may be granted if the Council finds in writing that the proposed design or improvement is in substantial compliance with the purpose and intent of the standard to be excepted.

#### **14.10.050 Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as defined in this section.

"Amendment" means any material added to the soil to alter the pH or improve the physical properties of the soil.



“Application rate” means the rate of irrigation (inches/hour or gallons per minute) at which water is applied by an irrigation system.

“Automatic control valve” means a valve in an irrigation system which is activated by an automatic electric controller via an electric control wire.

“Automatic irrigation system” means an irrigation system that can be controlled without manual manipulation and which operates on a pre-set program.

“Contour” means a line drawn on a plan which connects all points of equal elevation above or below a known or assumed reference point.

“Controller” means an automatic timing device with enclosure which signals automatic valves to open and close on a pre-set program.

“Coverage” is a general term used with respect to the spacing of sprinkler heads which defines the manner in which water is applied.

“Cycle” means, in irrigation, the complete operation of a controller station.

“Drip irrigation” means low volume irrigation.

“Grading” means earthwork performed to alter the natural contours of an area to be planted.

“Infiltration rate” means the rate (inches per hour) in which water moves through soil under natural conditions.

“Irrigation system” means a complete connection of system components, including the water source, the water distribution network, and the necessary irrigation equipment.

“Median” means a planted area which separates two (2) roadways or divides a portion of a road into two (2) or more lanes.

“Mulch” means materials such as bark or sawdust placed on the soil surface to retain moisture, retard weed growth, or prevent erosion.

“Overspray” means water which is discharged from a pop-up or spray head which lands outside of the planting area.

“Percolation” means the movement of water through soil.

“Permeability” means the quality of a soil which allows water and air to pass through it.

“Planting area” means the parcel area less building pad(s), driveway(s), patio(s), deck(s), walk-way(s) and parking area(s). “Planting areas” include water bodies (i.e., fountains, ponds, lakes) and natural areas.

“Planting plan” means a plan showing the features, contours, and dimensions of a plot of land, along with the location and dimensions of elements to be constructed.

“Point of connection” means a point at which the irrigation system is connected to the public water system. This location is normally identified by the point at which a water meter is located or will be installed.

“Precipitation rate” means the amount of water, in inches per hour, discharged by a group of sprinkler heads.

“P.S.I.” means pounds per square inch gauge water pressure.

“Rain shutoff” means a feature of an automated irrigation system which interrupts the normal irrigation cycle when it detects a significant amount of rainfall.

“Rehabilitated landscape” means any planting area(s) in which landscape materials are replaced or modified. Examples include a change of plants or groundcover, installation of a new irrigation system, and grading modifications.

“Runoff” means water which is not absorbed by the soil to which it is applied. Runoff usually occurs when water is applied at too great a rate or when water is applied to a steep slope.

“Station” means a position on an automatic irrigation controller which indicates the control point of automatic irrigation valves.

“Tensiometer or moisture sensor” means an instrument for measuring the moisture content of the soil and capable of interrupting the irrigation cycle when excessive or adequate moisture is detected.

“Toe of slope” means a horizontal section located at the base of a slope.

#### **14.10.060 Submittals.**

The following shall be submitted to the Public Works Department for review and approval:

A. Planting Plan. The planting plan shall be drawn on project base sheets in a clear and legible fashion.

1. A scale of no smaller than one (1”) inch equals forty (40’ 0”) feet shall be used.

2. Plan. The planting plan shall accurately and clearly identify:

a. Landscape materials, trees, shrubs, groundcover, turf, etc. Planting symbols shall be clearly drawn and plants labeled by botanical name, common names, container size, spacing and quantities of each group of plants indicated;

b. Property lines;

c. Streets, driveways, walkways, and other paved areas;

d. Building and structures including elevation, if applicable;

e. Natural features – rock outcropping, existing oak and ornamental trees, shrubs, etc. – to remain;

f. Tree staking, soil preparation details, and any other applicable details.

B. Irrigation Plan. The irrigation plan shall be drawn on project base sheets in a clear and legible fashion.

1. The scale shall be equal to that used for the planting plan.

2. Plan. The irrigation plan shall accurately and clearly identify:

a. Flow rate and P.S.I. at the point of connection;

b. Coverage of all components of the irrigation system, including main and lateral lines;

c. Valves;

d. Controllers;

e. Heads;

f. Quick couplers;

g. Head precipitation rates;

h. Meter size;

i. Moisture sensor devices;

j. Rain switches;

k. Backflow prevention device.

C. Sloped Areas. Sloped areas shall be indicated by contour lines (this may be shown on grading plan).

D. Soil Tests. A soils report shall be prepared by a soil testing company and submitted with the plans. Soil samples shall be collected after grading operations are conducted and prior to the installation of landscape materials. Soil samples shall be sufficiently numerous to account for any soil variations that may be present in the planting areas. As a minimum, the following shall be included:

1. Soil infiltration;
2. Soil texture test;
3. Cation exchange capacity;
4. Soil fertility including tests for nitrogen, potassium, phosphorous, pH, organic matter and specific conductance (E.C.).

Amendments shall be added to correct for problems as noted by the soils report. A copy of the soils report shall be attached to the irrigation schedule which will be delivered to the owner and controller operator.

E. Water Use. Estimated plant water use calculations for each planting area shall be submitted with the planting plan.

F. Irrigation Schedule. An annual irrigation program with a minimum four-season water schedule shall be required for both the plant establishment period and established landscape. The water schedule shall include run time and frequency of irrigation for each station. The total average planted area precipitation shall not exceed thirty (30") inches/year for established landscapes (See EGMC 14.10.080, Plant selection). A copy of the schedule shall be delivered along with as-builts and any other information normally forwarded to the owner and controller operator.

#### **14.10.070 Irrigation system design criteria.**

A. Irrigation systems shall be designed so that the application rate does not exceed the infiltration rate of the soil, and will minimize overspray and runoff. The designer shall refer to EGMC Section 14.10.110, Soil infiltration rates, and the results of the soil tests to meet these design criteria. In general, low volume sprinkler heads, drip emitters and pressure compensation bubblers shall be used throughout the system.

B. Irrigation stations shall be separated (e.g., drip vs. overhead spray systems). Additional control valves shall be installed to account for different site-specific characteristics (i.e., full sun/full shade, level/sloping, shrubs/lawns, street trees, etc.).

C. Maximum sprinkler spacing for both turf and nonturf areas shall be fifty (50%) percent of the diameter of the throw. (Example: thirty (30' 0") feet diameter nozzle

should be no more than fifteen (15' 0") feet apart). Spacing of sprinklers shall take into account on-site wind conditions.

D. All irrigation systems shall be operated by an automatic controller. At a minimum, each controller shall have a rain shutoff operation, a fourteen (14) day calendar, two (2) independent programs, and three (3) cycles/day capabilities.

E. The irrigation system shall be designed to allow a complete watering cycle within a fourteen (14) hour period.

F. All turf areas shall utilize either pop-up rotary impact heads or spray heads with a minimum riser height of five (5") inches.

**14.10.080 Plant selection.**

A. Water Use Criteria. All landscapes shall comply with the following water use criteria:

1. The maximum amount of water that can be applied per year to any landscape shall average no greater than thirty (30") inches of supplemental water.

2. The planted area shall balance the water demands of different plant species to create an overall landscape which requires a moderate amount of water. For design purposes, planting area shall be defined as low-use, medium-use, or high-use areas. (Refer to EGMC Section 14.10.120 for a list of low-, medium-and high-use plants). Water use values (*Table 1 below*) reflect the relative water use of each type of planting area. To check a landscape design for compliance, multiply the water use value by its respective planting area.

Example: Assume a two (2) acre landscape plan consists of twenty (20%) percent high-use plants (turf), fifty (50%) percent medium-use plants, and thirty (30%) percent low-use plants.

$$20\% (2 \text{ acres}) 0.40 \text{ acres} \times 1.6 = 0.64$$

$$50\% (2 \text{ acres}) 1.00 \text{ acres} \times 1.0 = 1.00$$

$$30\% (2 \text{ acres}) 0.60 \text{ acres} \times 0.4 = \underline{0.24}$$

$$1.88 < (2 \text{ acres})$$

Since the sum of the water use factors is less than the area, two (2) acres, the design is acceptable. If the sum of the water use factors exceeded two (2), the design would not be acceptable, and the designer would be required to substitute some high-use species with low- or medium-use species to reduce the sum of water use factors to two (2) or less.

**Table 1**

<b>Planting Type</b>	<b>Water Use Values</b>
Low use	0.40
Medium use	1.00
High use (includes turf and water bodies)	1.60

Water use calculations including plant key and planting area shall be shown on the planting plan according to the format in the following example:

Assume a landscape design involves two thousand six hundred (2,600 ft<sup>2</sup>) square feet of planting area. The planting plan consists of six hundred (600 ft<sup>2</sup>) square feet of Cistus purpureus (CP), six hundred (600 ft<sup>2</sup>) square feet of Nerium oleander (NO), four hundred (400 ft<sup>2</sup>) square feet of Pittosporum tobira (PT), Juniperus Horizontals (JH), and Liquidamber styraciflua (LS), and one thousand (1,000 ft<sup>2</sup>) square feet of turf.

**Water Use Calculation**

<u>Water Use</u>	<u>Plant Key</u>	<u>Sq. Ft.</u>	<u>Water Use Factor</u> <u>(Total Sq. Ft. x Use Value)</u>	
Low	CP	600	1,200 x 0.4 =	480
	NO	600		
Medium	PT, JH and LS	400	400 x 1.0 =	400
High	Turf	<u>1,000</u>	1,000 x 1.6 =	<u>1,600</u>
		2,600		2,480

**B. Turf Selections and Use.**

1. Turf shall not be permitted in planted areas ten (10' 0") feet or less in width, or in median strips.
2. Under no circumstances shall turf be installed on slopes greater than twenty (20%) percent. The toe of any sloping section shall be a minimum of twenty-four (24") inches behind a curb or sidewalk.
3. Turf areas which exceed 2,500 square feet are required to use soil moisture sensors and rain shutoff devices as a part of the irrigation system. Device type and installation shall be per manufacturer's recommendations.

4. Turf shall not be installed within ten (10' 0") feet of the dripline of native oak trees.
5. Turf shall be of a variety well suited to the local climate (i.e., tall fescue).

C. Nonturf Selections.

1. Plants selected for use in nonturf areas should be well suited or adaptable to the climate of this region. Plants shall be grouped according to their water needs and irrigated separately. Species of different water needs may be grouped (i.e., low with medium and medium with high) but the highest water use value of the two shall be used to determine compliance with this chapter. Low-and high-use species may not be used in the same irrigation area. To use species other than those listed in EGMC Section 14.10.120, the designer may provide the City with information indicating the water requirement of the species. Information may include the listing of a plant in an acceptable reference (see EGMC Section 14.10.120) stating its water requirement characteristics, comparing it to a species in the plant list, field data, etc.
2. A minimum of three inches of an organic mulch shall be placed in shrub areas on the soil surface after planting. Nonporous materials shall not be placed under the mulch.

**14.10.090 Certificate of compliance.**

Upon completion of the installation of the landscaping, the designer shall certify that the landscape complies with all County Water Conserving Landscape Requirements. Certification shall be accomplished by completion of a certificate of compliance on a form approved by the Director of the City Public Works Department. Failure to submit a complete and accurate certificate of compliance will delay final approval of the project and/or discontinue water service.

**14.10.100 Model home landscape criteria.**

- A. For each subdivision with three or more model homes, the developer shall submit a landscape plan and install landscaping for one model home which incorporates the County's Water Conserving Landscape Requirements. The intent of this requirement is to demonstrate to prospective home buyers the feasibility and aesthetic qualities of water-conserving landscape design.
- B. Signs identifying aspects of the landscape design and irrigation shall be placed around the model. These signs should be clearly marked on the landscape plan for the model. The following criteria shall be used in developing and placing the signs:
  1. Front Yard Sign Identifying Model. A sign, large enough to be visible from the street and sidewalk, at least two by two (2'0" x 2'0") feet, shall be located in front of the model

home. The sign shall indicate that the model is landscaped with water-conserving plant materials and irrigation systems.

2. Other Exterior Signs. A sign shall be placed within the landscaped area identifying the irrigation system used, the different subareas of the landscape, and any other features that contribute to the overall water-conserving theme.

3. Interior Signs or Displays. A drawing, or combination of drawings, shall be displayed inside the model providing a schematic of the landscape. These drawings shall include a key identifying the plants in the yards. It is suggested that this schematic also be printed on a one-page handout to be available at the model or the sales office. The drawings could be a simplified rendering of the landscape plan itself, using common names rather than the Latin names for the plants. The drawing(s) should be colorful and easy to read.

Literature describing water-conserving landscapes shall be available to individuals touring the model.

**14.10.110 Soil infiltration rates.**

**Soil Infiltration Rates**

Percent of Soil Texture, Type Slope: Infiltration Rate (IR) Inches/Hour	0-4%	5-8%	8-12%	12-16%	Over16%
Coarse Sand	1.25	1.00	0.75	0.50	0.31
Medium Sand	1.06	0.85	0.64	0.42	0.27
Fine Sand	0.94	0.75	0.56	0.38	0.24
Loamy Sand	0.88	0.70	0.53	0.35	0.22
Sandy Loam	0.75	0.60	0.45	0.30	0.19
Fine Sandy Loam	0.63	0.50	0.38	0.25	0.16
V. Fine Sandy Loam	0.59	0.47	0.35	0.24	0.15
Loam	0.54	0.43	0.33	0.22	0.14
Silt Loam	0.50	0.40	0.30	0.20	0.13
Silt	0.44	0.35	0.26	0.18	0.11
Sandy Clay	0.31	0.25	0.19	0.12	0.08
Clay Loam	0.25	0.20	0.15	0.10	0.06
Silty Clay	0.19	0.15	0.11	0.08	0.05
Clay	0.13	0.10	0.08	0.05	0.03

Note: Rates based on full cover. These figures decrease with time and percent of cover. Derived from USDA information.



#### 14.10.120 Relative water requirements of commonly used plants.

The following is a list of plants that are commonly used in landscape designs with water requirement classifications of low (L), medium (M), or high (H).

The list should not be considered a complete list of plants that can be used in landscape projects. The list is provided to assist the landscape designer in choosing species of appropriate water demands to meet the requirements of this document, and to group species of similar water demands to facilitate efficient irrigation. To use species other than those listed, the designer may provide the City with information indicating the water requirement of the species. Information may include the listing of a plant in an acceptable reference stating its water requirement characteristics, comparing it to a species in the plant list, field data, etc. Acceptable references include the "Sunset Western Garden Book"; "Trees and Shrubs for Dry California Landscapes," Robert Perry; and "Water Wise Gardening," E.B.M.U.D.

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Abelia	grandiflora		H
	" "	"Edward Goucher"	H
Abutilon	hybridum		H
	Megapotamicum		H
Acacia	adunca		H
	cognata		M
	cultriformis		M
	cyclops		L
	glaucoptera		M
	lasiocarpa		M
	longifolia		M
	melanoxydon		L
	ongerup		L
	paxii		M
	pendula		M
Acanthus	pravissima		M
	redolens		L
	Mollis		H
Acer	circinatum		H
	negundo		H
	oblongum		H
	palmatum		H
	" "	dissectum	H

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	platanoides		M
	rubrum		H
	“ “	"Red Sunset"	H
	saccharinum		M
	saccharum		H
Achillea	millefolium		L
Acorus	gramineus		M
Actinidia	chinensis		H
Aeonium	arboreum		L
Aesculus	californica		L
	carnea		L
Agapanthus		"Peter Pan"	L
	africanus		L
	orientalis		L
Agave	americana		L
	attenuata		L
	sisiliana		L
Agonis	flexuosa		L
Ajuga	reptans		H
Akebia	quinata		M
Albizia	julibrissin		L
Allmanda	cathartica		M
Alnus	cordata		M
	oregona		H
	rhubifolia		H
Alnus	glutinosa		H
Alocasia	odora		H
Aloe	arborescens		L
Aloe	vera		M
Alpinia	zerumbet		H
Alsophilia	australis		H
Alyogyne	huegelii		L
Ampelopsis	veitchi		M
Andromeda	polifolia		H
Aralia	elegantissima		H
	sieboldii		H
Araucaria	bidwillii		M
	heterophylla		M
Arbutus	menziesii		L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	unedo		M
Archontophoenix	cunninghamiana		M
Arctostaphylos		"Emerald Carpet"	L
		"Green Sphere"	L
		"Howard McMinn"	L
	bakeri	"Louis Edmunds"	L
	densiflora	"Sentinel"	L
	edmundsii	"Carmel Sur"	L
	hookeri	"Monterey Carpet"	L
	" "	"Wayside"	L
	manzanita	"Dr. Hurd"	L
	uva-ursi		L
	uva-ursi	"Pacific Mist"	L
	" "	"Point Reyes"	L
	" "	"Radiant"	L
	" "	"Woods Compact"	L
Arctotheca	calendula		M
Arecastrum	romanzoffianum		M
Arenaria	verna		H
Artemisia	arborescens		L
	pycnocephala	"David's Choice"	L
	stelleriana	"Silver Brocade"	L
Asparagus	densiflorus	"Sprengeri"	M
	plumosus		M
Aspidistra	elator		H
Asplenium	nidus		H
Atriplex	lentiformis		L
	" "	breweri	L
Aucuba	japonica		H
	" "	"Variegata"	H
Azalea	indica		H
Baccharis	pilularis		L
	" "	"Twin Peaks"	L
Bauhinia	blakeana		M
	variegata		M
Berberis	julianae		L
	mentorensis		L
	thunbergii		L
Berginia	cordifolia		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Betula	pendula		H
	" "	"Dalecarlica"	H
Bougainvillea	verrucosa		H
		"Barbara Karst"	M
Brunfelsia		"San Diego Red"	M
	calycina		H
Buxus	pauciflora		H
	harlandii		M
Calliandra	microphylla		M
	" "	japonica	M
	sempervirens		M
Callistemon	tweedii		L
Callistemon	citrinus		L
	" "	"Jeffersii"	L
	lanceolatus		L
Calocedrus	viminalis		L
	decurrens		M
Calycanthus	occidentalis		H
Camellia	hiemalis		H
	japonica		H
	sasanqua		H
Campanula	poscharskyana		H
Campsis	radicans		M
Carissa	grandiflora		M
Carpenteria	californica		L
	" "	"Elizabeth"	L
Carpobrotus	edulis		M
Cassia	artemisioides		L
	leptophylla		L
Casaurina	glauca		L
	stricta		L
Catalpa	speciosa		M
Ceanothus		"Blue Jeans"	L
		"Concha"	L
		"Dark Star"	L
		"Frosty Blue"	L
		"Joyce Coulter"	L
		"Julia Phelps"	L
	"Ray Hartman"	L	

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
		"Sierra Blue"	L
		"Skylark"	L
		"Tilden Park"	L
		"Blue Buttons"	L
	cordulatus		L
	Gloriosus		L
	" "	"Anchor Bay"	L
	" "	exaltatus "Emily Brown"	L
	" "	var. porrectus	L
	griseus	horizontalis	L
	" "	horizontalis "Yankee Point"	L
	" "	"Santa Ana"	L
	hearstiorum		L
	rigidus	"Snowball"	L
	thyriflorus	repens	L
		"Snow Flurry"	L
Cedrus	atlantica		L
	" "	"Glauca"	L
	deodara		L
	libani		L
Celtis	australis		L
	sinensis		L
Centaurea	cineraria		L
Cephalanthus	occidentalis	var. californicus	H
Cerotonia	siliqua		L
Cercidum	floridum		L
Cercis	canadensis		L
	occidentalis		L
Cercocarpus	betuloides		L
Cestrum	nocturnum		H
Chaenomeles	japonica		M
Chamaecyparis	obtusa		M
	" "	"Nana"	M
	pisifera		M
Chamaerops	humilis		M
Cheiranthus	variegata		L
Choisya	ternata		H
Cinnamomum	camphora		M
Cissus	antarctica		H

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Cistus	rhubifolia		H
		"Sunset"	L
		"Warley's Rock Rose"	L
	crispus		L
	hybridus		L
	landanifer		L
	purpureus		L
	salvifolius	"Prostratus"	L
	skanbergi	"Low Pink"	L
Citrus	limon		L
Clematis	armandii		H
Clivia	miniata		H
Clytostoma	callistegioides		M
Cocculus	laurifolius		H
Cocos	plumosa		M
Coleonema	pulchrum		M
Convovulus	cneorum		L
Coprosma	kirkii		L
Coprosma	repens		L
Cordyline	indivisa		H
Cornus	florida		H
	stolonifera		H
Correa	alba		L
	pulchella		L
Cortaderia	selloana		L
Corylus	avellana		M
	cornuta		H
Cotinus	coggygria		L
Cotoneaster		"Lowfast"	L
	apiculatus		L
	dammeri		L
	horizontalis		L
	lacteus		L
	microphyllus		L
	" "	thymifolius	L
	parneyi		L
Crataegus	lavellei		M
	oscantha	"Paul's Scarlet"	M
	phaenapyrum		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Cupaniopsis	anacardioides		M
Cupressocyparis		"Gold Cup"	M
	leylandii		M
Cupressus	glabra		L
	macrocarpa		L
	sempervirens		L
Cycas	revoluta		M
Cyperus	alternifolius		H
	papyrus		H
Cytisus	praecox		L
	purpureus	atropurpureus	L
	racemosus		L
	scoparius		L
	" "	"Lilac Time"	L
Deutzia	gracilis		M
Dianthus	alpinus		M
Diascia		"Ruby Field"	M
	fetcaniensis		M
	rigescens		M
Dicksonia	antarctica		H
Dietes	bicolor		L
	vegeta		L
Diosma	pulchrum		M
Diplacus	aurantiacus		M
Distictis	buccinatoria		H
Dodonaea	viscosa	"Purpurea"	L
Doxantha	unguis-cati		M
Duchesnea	indica		H
Echium	fastuosum		L
Elaeagnus	angustifolia		L
	pungens	"Maculata"	L
Eriobotrya	deflexa		M
	japonica		M
Eriogonum	arborescens		L
	crocatum		L
	fasciculatum		L
	giganteum		L
	umbellatum	polyanthum	L
Erythrina	carrfa		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Escallonia	coralloides		M
		"Fradesii"	M
		"Red Elf"	M
Eucalyptus	rubra		M
	" "	"Newport Dwarf"	M
	camaldulensis		L
	cinerea		L
	cladocalyx		L
	globulus	"Compacta"	L
	grandis		L
	gunnii		L
	leucoxylon		L
	maculata		L
	microtheca		L
	nicholii		L
	nitens		L
	polyanthemus		L
	rudis		L
sideroxylon		M	
torquata		L	
Euonymus	alata	"Compacta"	M
	fortunei		M
	japonica		M
	patens		M
Euryops	pectinatus		L
	" "	"Virides"	L
Fatshedera	lizei		H
Fatsia	japonica		H
Feijoa	sellowiana		M
Felicia	ameloides		M
Festuca	ovina	"Glauca"	L
Ficus	pumila		H
Forsythia	intermedia		M
	ovata		M
Fragaria	chiloensis		H
Fraxinus	americana		H
	holotricha		M
Fraxinus	latifolia		H
	oxycarpa		M



GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	" "	"Raywood"	M
	pennsylvanica		M
	uhdei		M
	" "	"Orange County"	M
	velutina		M
Fremontodendron		"California Glory"	L
		"Pacific Sunset"	L
Galvezia	speciosa		L
Gardenia	jasminoides		H
Garrya	elliptica	"James Roof"	M
Gaultheria	shallon		M
Ganzania		"Burgundy"	L
		"Copper King"	L
		"Fiesta Red"	L
		"Gold Rush"	L
		"Sunrise Yellow"	L
Geijera	parviflora		M
Gelsemium	sempervirens		M
Genista	lydia		L
	pilosa	"Vancouver Gold"	L
Ginkgo	biloba		M
Gleditsia	triacanthos		M
	" "	"Aurea"	M
	" "	"Moraine"	M
	" "	"Shademaster"	M
Grevillea		"Canberra"	M
		"Noelii"	M
	lanigera		L
	robusta		M
Grewia	caffra		H
Hakea	suavelolens		L
Hebe		"Blue Elf"	M
		"Co-Ed"	M
		"Patty's Purple"	M
	buxifolia		M
	menziesii		M
Hedera	canariensis		H
	helix		M
Helianthemum	nummularium	"Apricot"	L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	" "	"Stoplite"	L
	" "	"Wisley Pink"	L
Helixine	soleirollia		H
Hemerocallis	sp		M
Herniaria	glabra		H
Heteromeles	arbutifolia		L
	" "	"Yellow Berry"	L
Heuchera	maxima		M
Heuchera	sanguinea		M
Hibiscus	rosa-sinensis		H
Hydrangea	macrophylla		M
Hymenosporum	flavum		M
Hypericum	patulum		M
Iberis	Sempevirens		M
Ilex	aquifolium		H
	cornuta		H
	crenata		H
	dimorphophylla		H
	vomitorea	"Nana"	H
	" "	altaclarensis	H
Iris	douglasiana		H
Jacaranda	acutifolia		M
Jasminum	mesnyi		L
	polyanthum		M
Juglans	nigra		L
Juniperus	chinensis		L
	conferta		H
	excelsa		M
	horizontalis		M
	procumbens		M
	sabina		L
	scopulorum		L
	shimpaku		M
	squamata		L
	virginiana		L
Kniphofia	uvaria		L
Koelreuteria	bipinnata		M
	paniculata		M
Laburnum	wateri		H

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Lagerstroemia	faureri		L
	indica		L
Lantana	camara		M
	sellowiana		M
Laurus	nobilis		L
Lavandula	angustifolia		L
	" "	"Hidcote"	L
	" "	"Munstead"	L
Leptospermum	scopiarum		L
Leucophyllum	frutescens		L
	" "	"Compactum"	L
Liguistrum	japonicum		H
	" "	"Texanum"	H
	lucidum		H
	vulgare		H
Limonium	perezii		M
Lippia	canescens		L
Liquidambar	styraciflua		M
	" "	"Burgundy"	M
	" "	"Festival"	M
Liquidambar	styraciflua	"Palo Alto"	M
Liriodendrum	tulipifera		H
Liriope	gigantea		M
	muscari		H
	spicata		M
Lithodora	diffusa		M
Lonicera	heckrottii		M
	japonica	"Halliana"	M
	tatarica		M
Lupinus	albifrons		L
Macfadyena	unaquis-cati		M
Magnolia	grandiflora		M
	" "	"Majestic Beauty"	M
	soulangiana		H
	stellata		H
Mahonia	aquifolium		L
	lomariifolia		L
	nevinii		L
	pinnata		L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Malus	repens		L
	floribunda		H
	ioenis		H
	purpurea		H
Maytenus	boaria		M
	Malaleuca		L
Malaleuca	linariifolia		L
	nesophila		L
Metasequoia	quinquenervia		L
	glyptostroboides		H
Metrosideros	excelsus		L
Moraea	bicolor		L
	iridioides		L
Morus	alba		M
Myoporum		"Pacificum"	L
	debile		L
	laetum		L
Myoporum	parvifolium		L
Myrica	californica		M
Myrsine	africana		M
Myrtus	communis		L
Nandina	domestica		M
Nephrolepis	cordifolia		H
Nerium	oleander		L
	" "	"Mrs. Roeding"	L
	" "	"Petite Pink"	L
	" "	"Petite Slamon"	L
	" "	"Sister Agnes"	L
Nyssa	sylvatica		H
Oenothera	berlandieri	"Siskiyou"	L
	stubbei		L
Olea	europaea		L
Ophiopogon	japonicus		H
Osmanthus	fragrans		M
	ilicifolius		M
Pachysandra	terminalis		M
Parkinsonia	aculeata		L
Parthenocissus	quinquefolia		M
	tricuspidata		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Passiflora	pfordtii		M
Pennisetum	aculeata		L
Penstemon	gloxinioides		L
Phaedranthus	buccinatorius		M
Philadelphus	virginalis		M
Philodendron	selloum		H
Phoenix	canariensis		L
	reclinata		M
	roebelenii		M
Phormium	tenax		M
	" "	"Bronze"	M
	" "	"Variegatum"	M
Photinia	fraseri		M
	serrulata		M
Phyla	nodiflora		M
Phyllostachys	aurea		M
Picea	abies		H
	glauca		H
	pungens		H
Pieris	forrestii		H
	japonica		M
Pinus	canariensis		M
	contorta		M
	densiflora		H
	eldarica		L
	haldepenis		L
	jeffreyi		L
	mugo		M
	nigra		H
	patula		M
	pinea		L
	ponderosa		L
radiata			M
	roxburghii		M
	sabiniana		L
	strobis		M
	sylvestris		M
	thunbergii		L
	torreyana		L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Pistacia	chinensis		L
	vera		L
Pittosporum	crassifolium		M
	eugenioides		M
Pittosporum	tenuifolium		M
	tobira		M
	" "	"Variegata"	M
	" "	"Wheeler's Dwarf"	M
	undulatum		M
Platanus	acerifolius		M
	" "	"Bloodgood"	M
	" "	"Yarwood"	M
	cashmeriana		M
	occidentalis		M
	orientalis		M
Plumbago	racemosa		M
	auriculata		M
	capensis		M
Podocarpus	gracilior		H
	macrophyllus		M
	" "	"Maki"	M
Polygala	dalmaisiana		M
Polystichum	munitum		H
Populus	balsamifera		M
	bolleana		M
	canadensis		H
	fremontii		H
	nigra		H
	" "	"Italica"	M
	tremuloides		H
Potentilla	trichocarpa		H
	fruticosa		H
	veitchii		H
	verna		H
Prunus	blieriana		M
	caroliniana		M
	cerasifera		M
	cistena		M
	glandulosa		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	laurocerasus		H
	lyonii		L
	serrulata		H
	subhirtella		H
	yedoensis		H
Psidium	cattelianum		M
Punica	granatum		L
Pyracantha	coccinea		L
	fortuneana		L
	koidzumii		L
Pyrus	calleryana		H
	" "	"Aristocrat"	M
	" "	"Bradford"	M
	Kawakami		M
Quercus	agrifolia		L
Quercus	coccinea		M
	douglasii		L
	ilex		L
	kelloggii		M
	lobata		L
	palustris		M
	robur		M
	rubra		M
	shumardii		M
	suber		L
	virginiana		M
	wislizenii		L
Raphiolepis	indica		L
	" "	"Jack Evans"	L
	" "	"Pink Dancer"	L
	" "	"Pink Lady"	L
	" "	"Pinkie"	L
	" "	"Rosea"	L
	" "	"Snow White"	L
	umbellata		L
	" "	"Majestic Beauty"	L
Rhamnus	alaternus		L
	california	"Eve Case"	L
	californica		L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Rhus	crocea	illicifolia	L
	integrifolia		L
	lancea		L
	ovata		M
typhina			L
Ribes	aureum	var. gracillimum	M
	sanguineum		M
	glutinosum	"Claremont"	M
		"white Icicle"	M
Robinea	viburnifolium		M
	ambigua		L
Robinia	pseudoacacia		L
	" "	"Idaho Pink"	L
	" "	"Purple Robe"	L
Romneya	coulteri		M
Rosa	banksiae		M
	californica		H
	officinalis		L
Rosmarinus	" "	"Lockwood de Forest"	L
	" "	"Prostratus"	L
	" "	"Tuscan Blue"	L
Sagina	subulata		H
Salix		"Allen Chickerikng"	H
	abla		H
	babylonica		H
	hindsiana		H
	lasiandra		H
	matsudana		H
Salix	clevelandii		L
Salvia	greggii		L
	" "	"Coral"	L
	" "	"Pink"	L
	" "	"Purple"	L
	" "	"Red"	L
	" "	"White"	L
	leucantha		L
	Leucophylla		L
	" "	"Pt. Sal"	L
	mellifera		L



GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
Sambucus	caerulea		H
	mexicana		H
Santolina	chamaecyparissus		L
	virens		L
Sapium	sebiferum		M
Sarcococca	ruscifolia		M
Saxifraga	arendsii		H
	rosacea		H
	stolonifera		H
Scabiosa	anthemifolia		M
Scaevola	Humilus		M
Scaevola		"Mauve Clusters"	M
Schinus	molle		L
	terebinthifolius		L
Seaforthia	elegans		M
Sequoia	sempervirens		L
	" "	"Aptos Blue"	M
	" "	"Los Altos"	M
	" "	"Santa Cruz"	M
	" "	"Soquel"	M
Sequoiadendron	giganteum		L
Sisyrinchium	bellum		H
	" "	"Nana"	H
	californicum		H
Solanum	macounii	"Album"	H
	jasminoides		M
	rantonetti		M
Sollya	heterophylla		M
Sophora	japonica		M
Sorbus	aucuparia		H
Spirea	bumalda		M
	cantoniensis		M
	nipponica		M
	prunifolia		M
	thunbergii		M
	vanhouttei		M
Strelitzia	nicolai		M

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	reginae		M
Syringa	persica		H
	vulgaris		H
Syzygium	paniculatum		M
Taxus	baccata		M
	media		M
Tecomaria	capensis		M
Ternstroemia	gymnathera		H
Thelvetia	peruviana		M
Thuja	occidentalis		H
	orientalis		H
Thymus	albus		L
	citriodorus		L
	drucei		L
	rosea		L
	serphyllum		L
Tibouchina	urvilleana		M
Tilia	cordata		H
Tipuana	tipu		L
Trachelospermum	asiaticum		M
	jasminoides		M
Trachycarpus	fortunei		M
Trichostema	lanatum		L
Tsuga	canadensis		H
Tulbaghia	violacea	"Variegata"	L
Ulmus	americana		H
	parvifolia		M
	" "	"Drake"	M
Umbellularia	californica		M
Verbena	tenuifolium		L
Veronica			H
Viburnum	burkwoodi		M
	dauidii		H
	opulus		M
	plicatum		M
	suspensum		M
	tinus		L
Vinca	major		L
	minor		L

GENUS	SPECIES	CULTIVAR OR VARIETY	WATER REQUIREMENTS
	rosea		L
Vitis	californica		H
Washingtonia	filifera		H
	robusta		M
Weigela	florida		M
Westringia	rosamariniformis		H
Wisteria	floribunda		L
	sinensis		M
Woodwardia	fimbriata		M
Xylosma	congestum		H
Yucca	aloifolia		L
	bervifolia		L
	filimentosa		L
Yucca	gloriosa		L
	pendula		L
	recurvifolia		L
	whipplei		L
Zantedeschia	aethiopica		H
Zauschneria		"Everett's Choice"	L
	californica		L
Zeldova	serrata		M

The following books are suggested as a bibliography reference list for the selection of plants in addition to a plant list:

- A. "Plants for California Landscapes: A Catalog of Drought-Tolerant Plants," California Department of Water Resources.
- B. "Trees and Shrubs for Dry California Landscapes," Robert Perry.
- C. "A Success List of Water-Conserving Plants," Saratoga Horticultural Foundation.
- D. "Select California Native Plants," Saratoga Horticultural Foundation.
- E. "Water Wise Gardening/East Bay Municipal Utility District Book."

## **TITLE 15**

### **WATER AND SEWERS**

#### **Chapters:**

#### **15.10 Storm Drainage Fee**

#### **15.12 Stormwater Management and Discharge Control**

#### **Chapter 15.10**

### **STORM DRAINAGE FEE**

#### **Sections:**

15.10.010 Purpose.

15.10.020 Findings.

15.10.030 Definitions.

15.10.040 Levy of charge for storm drainage services.

15.10.045 Levy of charge in the South Elk Grove storm drainage utility fee area.

15.10.050 Reduction in charge.

15.10.060 Billing procedure.

15.10.070 Lien.

15.10.080 Collection of fee with general taxes.

15.10.090 Administration and enforcement.

15.10.100 Administrative appeal.

15.10.110 Deposit of collections.

#### **15.10.010 Purpose.**

The purpose of this chapter is to establish a mechanism for funding the operation and maintenance of the City storm drainage system in order that storm and surface waters

may be properly drained and controlled so that the health, safety and welfare of the City and its inhabitants may be safeguarded and protected.

**15.10.020 Findings.**

The City Council hereby finds as follows:

A. The City maintains a system of storm and surface water management facilities within the City, including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, overland release corridors, and other components as well as natural waterways.

B. Those elements of the City's storm and surface water management system that provide for the collection, storage, treatment, and conveyance of storm drainage are of benefit and provide services to all developed property within the City.

C. The cost of operating and maintaining the storm drainage management system, including necessary repairs, should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

D. Erosion and the discharge of nutrients, metals, oil, grease, and other substances into and through the storm drainage system is resulting in the degradation in water quality.

E. The public health, safety and welfare are adversely affected by poor water quality and flooding resulting from inadequate storm drainage management practices.

F. The storm drainage management practices necessary to protect water quality are largely established by federal and state statutes, regulations and permitting requirements.

G. Real property either uses or benefits from the presence and operation of the storm drainage management system.

H. The use of the storm drainage system is dependent on factors that influence runoff, including land use and impervious area.

I. The City has the authority under Section 5471 of the Health and Safety Code to prescribe, revise and collect fees, tolls, rates, rentals and other charges for facilities and services furnished by it in connection with its storm drainage system.

J. The Legislature, through the adoption of Section 5471 of the Health and Safety Code, has specifically authorized the City to provide storm drainage services as a utility function for which service charges may be levied.

K. Storm drainage services which are currently provided in the City are funded through a combination of property tax revenue and benefit assessments.

L. Property taxes have proven to be an unreliable source of revenue due to the state of California's recent proclivity for shifting local property tax revenue from the City and special districts to schools.

M. Benefit assessments are an undesirable revenue mechanism because of the significant lag-time between the time that the assessments are approved and the time that they are received as part of the real property tax collection and allocation process. The lag-time creates the need to include a component in the assessment to provide a reserve for dry period financing purposes.

N. A fee to fund storm drainage services offers a reliable and consistent source of revenue that is locally controlled and independent of the vagaries of the state of California's budget process.

#### **15.10.030 Definitions.**

The meanings ascribed to the terms set forth in this section shall govern the interpretation of this chapter.

A. "Administrative charge" means the charge imposed by the City's consolidated utility billing service for the actual cost of billing for, and collection of, storm drainage service fees.

B. "City storm drainage system" means the system of storm and surface water management facilities, including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, overland release corridors and other components, as well as natural waterways within the City, that are either owned or operated by the City.

C. "Commercial/office use" means the use of any developed parcel for any of the following or similar purposes: offices; wholesale or retail sales establishments or the provision of personal, professional or business services, including but not limited to: retail stores; shopping centers; restaurants; service stations; car washes; vehicle, boat and trailer sales lots; parking lots; automobile repair and service facilities; auction yards; advertising offices; nurseries; general offices; financial service facilities; medical and dental offices; clinics and laboratories; and veterinary offices, clinics and hospitals.

D. "County" means the County of Sacramento.

E. "Developed parcel" means any parcel of land altered from its natural state by the construction, creation or addition of impervious area.

F. "Engineer" means the City Engineer of the City of Elk Grove or his or her designee.

G. "Equivalent contributing parcel area" means the calculated area which, when multiplied by the impervious factor for the parcel's use classification, yields the parcel's measured impervious area.

H. "Exempt use" means the use of any public or undeveloped property and the use of any other parcel for any of the following purposes: agricultural land used for crops or pasture, aquatic farms, orchards, City-maintained drainage ditches, property within a floodplain recognized by the City on which improvements are prohibited, and levees.

I. "Fiscal year" means the annual period beginning July 1st and ending June 30th.

J. "Impervious area" means the total area of a parcel of property covered by an impervious surface.

K. "Impervious factor (IF)" means a factor which represents the percentage of impervious area on a parcel which consists of a numerical value that is calculated on the basis of generally accepted engineering standards, review and application of such standards to local conditions, and statistics compiled by measuring impervious areas depicted on aerial photographs of real property.

L. "Impervious surface" means any surface on or in any parcel which reduces the rate of infiltration of stormwater into the soil.

M. "Industrial use" means the use of any developed parcel for any of the following or similar purposes: to manufacture, fabricate, process or package products; to process or store food or chemical products; or for storage or warehousing purposes, including, but not limited to, processing, fabrication and assembly plants, warehouses, wrecking yards, aerospace facilities, truck and other transportation terminals, building materials storage, bakeries, canneries, wineries, creameries, meat and frozen food processing facilities, meatpacking plants, slaughter yards, inspection and weighing stations, airports, railroads and railroad spurs, wells, electrical substations, water or sewage treatment plants, and mini-storage facilities.

N. "Institutional use" means the use of any developed parcel for any of the following or similar purposes: hospitals, nursing facilities, residential care facilities, retirement homes, day nurseries, mortuaries, churches, and schools.

O. "Low impervious development use" means the use of any developed parcel for any of the following or similar purposes: golf courses, surface mines, cemeteries, marinas, and sports fields.

P. "Multifamily residential use" means the use of any developed parcel for any of the following or similar purposes: triplexes, fourplexes, apartments, mobile home parks, hotels, boarding and rooming houses, fraternity and sorority houses, motels, the common areas of condominiums and planned unit developments, and bed and breakfast inns.

Q. "Parcel" means the smallest separately segregated lot, unit or plot of real property having an identified owner, boundaries, and surface area which is documented for property tax purposes and given a tax lot number by the City Assessor.

R. "Parcel area" means the square footage of a parcel measured or estimated using the outside boundary dimensions in feet in order to obtain the total square footage without regard for any topographic features of the enclosed surface.

S. "Person" means any individual, firm, company, association, society, partnership, corporation, organization, group or public agency.

T. "Public agency" means the United States or any department or agency thereof; the state of California or any department or agency thereof; a city, a county, and any district or other local authority or public body of or within this state.

U. "Public property" means any property owned by a public agency.

V. "Public Works Department" means the Public Works Department for the City of Elk Grove.

W. "Residential dwelling unit" means any residential premises designed to house a single family.

X. "Single-family residential use" means the use of any developed parcel for any of the following or similar purposes: single-family residences, condominiums and planned unit developments, row houses, halfplexes, duplexes, and mobile homes located on individually owned parcels.

Y. "Street" means any public highway, road, street, avenue, way, alley or right-of-way.

Z. "Undeveloped use" means any parcel that has not been altered from its natural state, as evidenced by a complete lack of impervious surface.

AA. "Unit service charge (USC)" means the cost of storm drainage services attributable to storm drainage from one square foot of impervious area.

BB. "Use code" means the six (6) digit alphanumeric code assigned by the City Assessor's Office to every parcel within the City.



CC. "User" means the owner of a parcel of real property that is charged for storm drainage services.

**15.10.040 Levy of charge for storm drainage services.**

A. There is hereby levied by the City of Elk Grove on all parcels within the boundaries of the City of Elk Grove which were within Zone 12 of the Sacramento County Water Agency on June 30, 2003, and on any other parcels for which the City of Elk Grove has complied with applicable laws governing the levying of such fees, other than those classified as an exempt use, a storm drainage service fee to be collected as set forth in this section.

B. Any parcel classified as a single-family residential use shall pay a monthly charge which shall be calculated as follows: the administrative charge + (USC x 3,500 x each residential dwelling unit) = monthly charge.

C. All parcels other than those parcels classified as an exempt or single-family residential use shall pay a monthly charge that shall be calculated as follows: the administrative charge + (parcel area x USC x IF) = monthly charge.

D. The impervious factors (IF) to be used in the calculations set forth in subsection (C) of this section shall be based on the following table:

<b>Bill Category</b>	<b>Impervious Factor</b>
Commercial/office	0.80
Industrial	0.70
Multifamily residential	0.60
Institutional	0.50
Low impervious development	0.10

E. The unit service charge (USC) to be used in the calculations set forth in subsections (B) and (C) of this section shall be \$0.001583) Dollars per square foot of impervious area.

**15.10.045 Levy of charge in the South Elk Grove storm drainage utility fee area.**

A. In lieu of the fee described in EGMC Section 15.10.040, there is hereby levied by the City of Elk Grove on all parcels within the South Elk Grove storm drainage utility fee area as shown in Figure 1 attached to the South Elk Grove Storm Water Drainage Utility Fee Analysis Report dated September 2004, and on any other parcels for which the City of Elk Grove shall have complied with applicable laws governing the

levying of such fees, other than those classified as an exempt use, a storm drainage service fee to be collected as set forth in this section.

- B. A single-family residential parcel shall pay a monthly charge equal to the administrative charge + (unit service charge (USC) x each residential dwelling unit).
- C. All other nonexempt parcels shall pay a monthly charge equal to the administrative charge + (USC x parcel area in square feet x the impervious factor ÷ 2,000).
- D. The initial amount of the administrative charge (the maximum rate for fiscal year 2004 – 2005) is One and 74/100<sup>ths</sup> (\$1.74) Dollars.
- E. The initial amount of the unit service charge (the maximum rate for Fiscal Year 2004 –05) shall be Ten and 86/100<sup>ths</sup> (\$10.86) Dollars. "Unit service charge," for purposes of this section, means the cost of storm drainage services attributable to storm drainage from one equivalent residential unit.
- F. The impervious factors (IF) to be used in the calculations set forth in subsection (C) of this section shall be based on the following table:

<b>Property Category</b>	<b>Impervious Factor</b>
Commercial/office	0.80
Industrial	0.70
High density residential	0.60
Institutional/medium density residential	0.50
Low impervious development	0.10

For purposes of this section, the terms "high density residential" and "medium density residential" have the meanings specified in the City's General Plan.

G. The maximum administrative charge and unit service charge (USC) will be increased annually as of July 1st, commencing July 1, 2005, by the percentage change in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco – Oakland – San Jose areas.

**15.10.050 Reduction in charge.**

A. The owner of any parcel subject to the storm drainage fee, other than parcels classified as a single-family residential use, may file an application with the City Manager to have the fee levied on such parcel reduced by means of one of the following mechanisms: (1) by designing, constructing and maintaining at the owner's expense storm drainage detention facilities approved by the City Manager; (2) by

demonstrating to the satisfaction of the City Manager that less than five (5%) percent of the parcel area drains into a City storm drainage system; or (3) by demonstrating to the satisfaction of the City Manager that the actual impervious area of the parcel is at least ten (10%) percent less than that calculated using the impervious factor for the parcel's use classification.

B. After receipt and review of the application, the City Manager shall either deny any reduction in the fee or approve a reduced fee calculated pursuant to subsection (C) of this section. The City Manager, in approving any reduction in the otherwise applicable fee, may attach reasonable conditions to any such approval. If the applicant is dissatisfied with the action of the City Manager, he may file a petition pursuant to EGMC Section 15.10.100.

C. Any storm drainage facilities constructed by a parcel owner pursuant to this section shall meet the standards set forth in the City's improvements standards. Upon approval of any reduction in the otherwise applicable fee pursuant to this section, the revised fee shall be calculated on the basis of the equivalent contributing parcel area.

#### **15.10.060 Billing procedure.**

A. The storm drainage fee shall be billed to all users no less frequently than a bimonthly basis. The bill is due and payable on presentation and shall become delinquent forty-five (45) days after, for bimonthly billing, or twenty-one (21) days after, for a monthly billing, the date of billing. The storm drainage fee shall be billed as part of the City's consolidated utility billing service.

B. The storm drainage service fee billing shall be based on the use of the parcel as determined by the City Manager. For each parcel of property there shall be only one unit for purposes of billing for storm drainage services. In no case shall a parcel be divided into smaller units for billing purposes.

C. The storm drainage service fee shall be billed to the owner of record of the parcel, to the successor in interest of such person, or to such person's single designee if approved by the City Manager. All requests to bill a party other than the owner of record must be made in writing to the City Manager by both the owner of record and the party to be billed. The City Manager may approve or deny such requests at his sole discretion. The City Manager shall notify the owner of record if the billing is changed to comply with such a request, and the owner of record shall remain liable for any delinquent fees.

D. The opening bills shall be based on current parcel numbers, square footage and use codes on record in the City Assessor's Office, unless the City Manager determines that

the actual use of the parcel is different than the use reflected in the use codes, in which case the billing shall be based on the actual use of the parcel.

E. Any adjustment of charges may be initiated by either the City Manager or by the owner of a parcel subject to the storm drainage service fee. If the City Manager denies any adjustment proposed by an owner or an owner objects to an adjustment proposed by the City Manager, any adjustment shall be made pursuant to the procedure set forth in EGMC Section 15.10.100. Any debit adjustments shall be added to the charge in the succeeding billing period. Any credit adjustments shall first be credited against the previous balance and then any remaining credit shall be applied to subsequent bimonthly charges. No debits or credits shall be made for any period more than three (3) years prior to the date that an adjustment is proposed by the City Manager or requested by the owner of record pursuant to EGMC Section 15.10.100.

F. Any delinquent storm drainage fee shall incur an added penalty charge of ten (10%) percent of the amount that is delinquent. The delinquent amount, including the ten (10%) percent charge, shall thereafter incur an added penalty charge of one and one-half (1.5%) percent per month until paid or placed on the annual property tax bill. If collected with property taxes, the total amount delinquent, plus all penalties, shall incur an additional ten (10%) percent lien penalty.

#### **15.10.070 Lien.**

A. The City shall notify the assessee shown on the latest equalized assessment roll whenever delinquent and unpaid fees, which would become a lien on the parcel pursuant to subsection (B) of this section remain delinquent and unpaid for sixty (60) days.

B. The storm drainage service fee and any penalties levied pursuant to this chapter shall constitute a lien upon the parcel subject to the fee, as provided for in Section 5473.11 of the Health and Safety Code, if the fee remains delinquent for a period of sixty (60) days and the City has notified the assessee of the parcel shown on the latest equalized assessment roll of the delinquent fees and the lien provided by this section.

C. The lien provided herein shall have no force or effect until a certificate specifying the amount of the unpaid fees is recorded with the Sacramento County Clerk-Recorder.

#### **15.10.080 Collection of fee with general taxes.**

Any delinquent storm drainage service fees and penalties may be collected on the tax roll in the same manner and at the same time as the City's *ad valorem* property taxes.

**15.10.090 Administration and enforcement.**

The Engineer shall be responsible for the administration and enforcement of the provisions of this chapter. The Engineer shall have the authority to adopt rules and regulations not inconsistent with the provisions of this chapter for purposes of carrying out and enforcing the payment, collection and remittance of the fee herein levied.

**15.10.100 Administrative appeal.**

A. Any owner who disputes the amount of the storm drainage service fee charged to his parcel, the classification of the property in terms of its use, any adjustment proposed by the City Manager, or any other determination affecting the property made by or on behalf of the City pursuant to this chapter may file an appeal pursuant to EGMC Chapter 1.11.

**15.10.110 Deposit of collections.**

There is hereby created in the City Treasury a special revenue fund to be known as the "City storm drainage service fee fund." All storm drainage service fee revenue collected by the City shall be deposited in such fund. The revenue deposited in such fund shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of City storm drainage facilities.

**Chapter 15.12**

**STORMWATER MANAGEMENT AND DISCHARGE CONTROL**

Sections:

**Article I. General Provisions**

15.12.010 Findings.

15.12.020 Purpose and intent.

15.12.030 Definitions.

15.12.035 Construction.

15.12.040 Applicability.

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15.12.060 Compliance disclaimer.

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15.12.080 Administration.

15.12.090 Disclaimer of liability.

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15.12.100 Prohibited discharge.

15.12.110 Exceptions to discharge prohibition.

15.12.120 Exception to otherwise applicable exemptions.

15.12.130 General discharge prohibition.

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## **Article IV. Inspection, Monitoring and Reporting**

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15.12.400 Notice of noncompliance.

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15.12.430 Delivery of notice.

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15.12.460 Administrative civil penalties – Reimbursement of fines imposed upon City – Appeals.

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#### **Article VI. Recovery of Cost of Abatement**

15.12.500 Costs of abatement – Confirmation.

15.12.510 Costs – Assessments.

15.12.520 Treble costs.

15.12.530 Hearing of protests.

15.12.540 Assessment for summary abatement.

15.12.550 Time for contest of assessment.

15.12.560 Filing copy of report with County Auditor.

#### **Article VII. Commercial and Industrial Facilities**

15.12.600 Findings.

15.12.610 Purpose and intent.

15.12.620 Delegation of authority to county EMD.

15.12.630 Expiration of this article.

#### **Article I. General Provisions**

##### **15.12.010 Findings.**

A. The Federal Clean Water Act provides for the regulation and reduction of pollutants discharged into the waters of the United States by extending National Pollutant

Discharge Elimination System requirements to stormwater and urban runoff discharge into the City stormwater conveyance system.

B. Stormwater flows from individual properties to the City stormwater conveyance system and then ultimately to the waters of the United States.

C. The City is a co-permittee under the Waste Discharge Requirements for the county of Sacramento, cities of Sacramento, Folsom, Citrus Heights, Elk Grove, Rancho Cordova, and Galt Area-Wide Storm Water Discharges from Municipal Separate Storm Sewer Systems, which also serves as a National Pollutant Discharge Elimination System Permit under the Federal Clean Water Act (NPDES No. CA0082597). As a co-permittee, the City is required to possess the necessary legal authority, and to implement appropriate procedures, to regulate the entry of pollutants and nonstormwater discharges into the City stormwater conveyance system.

D. The municipal stormwater permit requires the City effectively to prohibit nonstormwater discharges into the City stormwater conveyance system except as otherwise permitted by federal law.

E. The City Council finds in this regard that the provisions of this chapter are necessary to provide the City with the legal authority necessary to implement and otherwise comply with the requirements of its municipal stormwater permit.

**15.12.020 Purpose and intent.**

A. This chapter is adopted pursuant to Article XI, Section 7 of the California Constitution which authorizes the City to exercise its police power to protect and promote the public health, safety and general welfare. While stormwater runoff is one step in the natural cycle of water, human activities including, but not limited to, agriculture, construction, manufacturing and the operation of an urban infrastructure may result in undesirable discharges of pollutants and certain sediments. Such discharges may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States. The purpose of this chapter is to protect and enhance the water quality of watercourses, water bodies and wetlands within the unincorporated area of the City in a manner consistent with the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and Municipal Discharge Permit No. CA0082597 by controlling the contribution of urban pollutants to stormwater runoff which enters the City stormwater conveyance system.

B. It is the intent of the City Council in adopting this chapter to provide the City with the legal authority to accomplish the following goals:



1. To reduce the discharge of pollutants in stormwater to the maximum extent practicable;
2. To effectively prohibit nonstormwater discharges into the City stormwater conveyance system;
3. To comply with the requirements of the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and NPDES Municipal Storm Water Discharge Permit No. CA0082597 as they apply to the discharge of pollutants into and from the City stormwater conveyance system;
4. To fully implement the comprehensive stormwater management program as approved by the Regional Board;
5. To protect the physical integrity and function of the City stormwater conveyance system from the effects of pollutants and materials other than stormwater;
6. To prevent the contamination of groundwater as a result of pollution migration from the City stormwater conveyance system;
7. To promote cost-effective management and beneficial use of sediments in the City stormwater conveyance system;
8. To protect the health and safety of maintenance personnel and the public who may be exposed to pollutants in the City stormwater conveyance system;
9. To provide for the recovery of regulatory costs incurred by the City in the implementation of its stormwater drainage program, including, but not limited to, enforcement activities, inspections, investigations, sampling and monitoring; and
10. To establish appropriate enforcement procedures and penalties for violations of the provisions of this chapter.

#### **15.12.030 Definitions.**

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the United States Environmental Protection Agency, as amended, and which are not specifically defined in this chapter shall, when used in this chapter, have the same meaning as set forth in said Act or regulation.

As used in this chapter, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise:

A. "Administrator" means the Public Works Director of the Public Works Department of the City of Elk Grove, or his or her designees.

B. "Best management practices (BMPs)" means schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of pollutants directly or indirectly to waters of the United States. BMPs shall also be defined to include structural controls, treatment controls, training requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

C. "County" means the County of Sacramento.

D. "City stormwater conveyance system" means those public and natural facilities within the City which are owned, operated, maintained or controlled by the City by which stormwater may be conveyed to waters of the United States, including, but not limited to, any roads with drainage systems, municipal streets, catch basins, water quality basins, detention basins, constructed wetlands, natural and artificial channels, aqueducts, canyons, stream beds, gullies, curbs, gutters, ditches, sumps, pumping stations, and storm drains. The City stormwater conveyance system includes natural creeks and small streams which are also defined as receiving waters by the municipal stormwater permit, but does not include the Sacramento River, American River, Cosumnes River, Mokelumne River, or navigable waterways of the Delta.

E. "Discharge" means the release or placement of any material into the City stormwater conveyance system, including, but not limited to, stormwater, wastewater, solid materials, liquids, hazardous waste, raw materials, debris, litter or any other substance.

F. "Illicit connection" means any physical connection to the City stormwater conveyance system which is not expressly authorized by the City.

G. "Implementing agency" means the agency or department designated by the Administrator to enforce the provisions of this chapter with respect to a particular site, facility or industry category.

H. "Industry or industrial activity" means any service, business, enterprise, or any other activity conducted by any person for the purpose of monetary or other compensation.

I. "Material" means any substance, including, but not limited to, raw materials, finished products, garbage and debris, lawn clippings, leaves and other vegetation, biological and fecal waste, sediment and sludge, oil and grease, gasoline, paints, solvents, cleaners and any fluid or solid containing chemicals.

J. "Municipal stormwater permit" means NPDES Permit No. CA0082597, including any amendments thereto or successor permit, issued by the Regional Board to the county and the cities of Folsom, Galt, Sacramento, Citrus Heights, Elk Grove and Rancho Cordova.

K. "National Pollution Discharge Elimination System permit" or "NPDES permit" means a permit issued by either the Regional Board or the State Water Resources Control Board pursuant to Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code to control discharges from point sources to waters of the United States.

L. "Nonstormwater discharge" means any discharge to the City stormwater conveyance system or directly to the Sacramento River, the Cosumnes River, the Mokelumne River, the navigable waters of the Delta, or the American River which is not composed exclusively of stormwater.

M. "Person" means any natural person as well as any corporation, partnership, public agency, trust, estate, cooperative association, joint venture, business entity or other similar entity, or the agent, employee or representative of any of the above.

N. "Pollutant" means any contaminant or other substance which, as determined by the Administrator, is discharged or has a reasonable potential to be discharged in sufficient quantities or concentrations to cause exceedance of receiving water limitations defined in Section C.1. of the municipal stormwater permit, or any successor section, or otherwise cause a violation of the municipal storm-water permit. "Pollutant" may include, but is not limited to, solid waste, sewage, garbage, medical waste, wrecked or discarded equipment, radioactive material, dredged soil, rock, sand, industrial waste, feces, fecal coliform, fecal streptococcus, enterococcus, volatile organic carbon, surfactants, oil and grease, petroleum hydrocarbon, organic solvents, metals, phenols, pesticides, nutrients, suspended or settleable solids, materials causing an increase in biochemical or chemical oxygen or total organic carbon, substances which alter pH, and those pollutants defined in Section 1362(6) of the Federal Clean Water Act.

O. "Potential user" means any person who by the nature of the enterprise, activity or industry in which such person is engaged, or by the use, possession or ownership of specified types of equipment, is determined by the Administrator to generate or have the capacity to generate wastes or wastewater which have significant potential to be discharged to the City stormwater conveyance system.

P. "Premises" means any building, lot, parcel or land, or portion thereof, whether improved or unimproved.

Q. "Prohibited discharge" means any nonstormwater discharge to the City stormwater conveyance system or directly to the Sacramento River, the Cosumnes River, the

Mokelumne River, navigable waters of the Delta, or the American River, which is not otherwise specifically authorized by this chapter, the Regional Board, state or federal law, or an NPDES permit.

R. "Receiving water limitations" means those restrictions defined and listed in Section C.1. of the municipal stormwater permit or any successor section.

S. "Receiving waters" means surface bodies of water, as defined by the municipal stormwater permit, including, but not limited to, creeks and rivers, which serve as discharge points for the City stormwater conveyance system.

T. "Regional board" means the California Regional Water Quality Control Board, Central Valley Region.

U. "State general construction activity permit" shall mean the State Water Resources Control Board's Water Quality Order No. 99-08-DWQ, National Pollution Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity, and any successor documents.

V. "State general industrial activity permit" shall mean the State Water Resources Control Board's Water Quality Order No. 97-03-DWQ, National Pollution Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, and any successor document.

W. "Stormwater" means surface runoff and drainage resulting from storm events and snow melt.

X. "Subject activity" means any industrial activity which is determined by the Administrator to discharge or have the potential to discharge pollutants into stormwater or nonstormwater in quantities or concentrations which may cause exceedance of receiving water limitations, or for which a requirement has been imposed by the state or federal government on the City to conduct stormwater regulatory activities focused on the activity.

Y. "Threatened prohibited discharge" means any condition or activity which does not currently result in a prohibited discharge but is nevertheless determined by the Administrator to be a condition which results in a substantial likelihood of a future prohibited discharge.

Z. "User" means any person who discharges, or causes to discharge, either directly or indirectly, stormwater or any other material into the City stormwater conveyance system.

AA. "Waters of the United States" has the same meaning as set forth in Part 122.2 of Title 40 of the Code of Federal Regulations or any successor provision.

#### **15.12.035 Construction.**

The provisions of this chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and any acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA0082597 and any amendment, revision or reissuance thereof. In the event of a conflict between this chapter and any federal or state law, regulation, order or permit, the requirement which establishes the higher standard for public health and safety shall govern.

#### **15.12.040 Applicability.**

The provisions of this chapter shall be applicable to all users and potential users located within the City and all users that discharge either directly or indirectly into the City stormwater conveyance system. This chapter shall not be applicable to persons located outside the boundaries of the City if their stormwater or nonstormwater discharge enters a stormwater conveyance facility owned or operated by another public agency which is subject to a valid NPDES permit for discharges from a municipal separate storm sewer system prior to entering the City stormwater conveyance system.

This chapter shall not apply to facilities subject to and in compliance with the state general construction activity stormwater permit and/or the City of Elk Grove erosion and sediment control ordinance. Nonstormwater discharges at construction sites between one and five acres in size, and which the Administrator determines are in accordance with the nonstormwater discharge standards of the state general permit for construction activity are considered to be in compliance with this chapter. This chapter shall not apply to facilities operated by the state of California or by agencies of the federal government.

#### **15.12.050 Regulatory consistency.**

The provisions of this chapter shall take precedence over and are controlling with respect to any conflicting or inconsistent provisions in this code.

#### **15.12.060 Compliance disclaimer.**

Compliance by any person with the provisions of this chapter shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements relating to the control of pollutant discharges or protection of stormwater quality, or both.

#### **15.12.070 Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter. The City Council hereby declares that it would have adopted this chapter and each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof without regard to whether any other section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter would subsequently be declared to be invalid or unconstitutional.

#### **15.12.080 Administration.**

Except as otherwise provided herein, the Administrator shall be responsible for the administration, implementation and enforcement of the provisions of this chapter. Any powers granted to or duties imposed upon the Administrator may be delegated by the Administrator to other City employees or, upon the approval of the City Council, to employees of other public agencies.

#### **15.12.090 Disclaimer of liability.**

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the City or any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

### **Article II. Prohibited Discharges**

#### **15.12.100 Prohibited discharge.**

Except as provided in EGMC Section 15.12.110, it shall be unlawful for any person to make or cause to be made any nonstormwater discharge into the City stormwater conveyance system or directly to the Sacramento River, American River, Cosumnes River, Mokelumne River, or navigable waters of the Delta.

#### **15.12.110 Exceptions to discharge prohibition.**

The following discharges to the City stormwater conveyance system are exempt from the otherwise applicable discharge prohibition set forth in EGMC Section 15.12.100:

A. Any discharge regulated under an NPDES permit issued to the discharger and administered by the state pursuant to Chapter 5.5 of Division 7 of the Water Code; provided, that any such discharge is in compliance with all requirements of the NPDES permit and all other applicable laws and regulations.

B. Any discharge from any of the following activities; provided, that any such discharge does not cause or contribute to the violation of any receiving water limitation as determined by the Administrator:

1. Water line flushing;

2. Landscape irrigation;

3. Diverted stream flows;

4. Rising ground waters;

5. Uncontaminated ground water infiltration (as defined in 40 CFR 35.2005(20)) to separate storm sewers;

6. Uncontaminated pumped ground water;

7. Discharges from potable water sources;

8. Foundation drains;

9. Air conditioning condensate;

10. Irrigation water;

11. Springs;

12. Water from crawlspace pumps;

13. Footing drains;

14. Lawn watering;

15. Individual residential car washing;

16. Flows from riparian habitats and wetlands;

17. Dechlorinated swimming pool discharges; or

18. Discharges or flows from emergency fire fighting activities.

C. Any discharges which the Administrator or the Regional Board determines in writing are necessary for the protection of public health or safety.

D. Additional categories of nonstormwater discharges which do not cause or contribute to the violation of any receiving water limitation may be accepted from the otherwise applicable prohibition by the Administrator upon approval of the Executive Officer of the Regional Board, as provided in Sections A.3. and D.4.a.1.d. of the municipal stormwater permit, or any successor sections.

**15.12.120 Exception to otherwise applicable exemptions.**

Notwithstanding the exemptions provided for in EGMC Section 15.12.110, if the Regional Board or the Administrator determines that a discharge which is otherwise exempt from the prohibition on discharges causes or significantly contributes to the violation of any receiving water limitation or results in the conveyance of significant quantities of pollutants to surface waters, or is otherwise a danger to public health or safety, the Administrator may give written notice to the owner or operator of the facility that the discharge exception shall not apply to the discharge at issue following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of such thirty (30) day period, any such discharge shall be unlawful. Upon finding that any continuance of the discharge poses an immediate significant threat to the environment or to public health and safety, the Administrator may waive the thirty (30) day waiting period and require immediate cessation of the discharge.

**15.12.130 General discharge prohibition.**

It shall be unlawful for any person to discharge, or cause to be discharged, any material to the City stormwater conveyance system which results in, or contributes to, a violation of the municipal storm-water permit.

**15.12.140 Threatened prohibited discharge.**

It shall be unlawful for any person to maintain, or cause to be maintained, a threatened prohibited discharge after having received notice of the Administrator's determination as to the existence of a threatened prohibited discharge.

**15.12.150 Illicit connections prohibited.**

A. It shall be unlawful for any person to establish, use or maintain, or cause to establish, use or maintain, any illicit connection. Illicit connections shall be subject to removal and abatement by the City pursuant to EGMC Chapter 16.02.

B. The prohibition set forth in subsection (A) of this section shall apply to illicit connections in existence at the time that the ordinance codified in this chapter becomes effective. Upon the effective date of the ordinance codified in this chapter, any person who maintains an illicit connection shall have thirty (30) days from the effective date of the ordinance codified in this chapter to disconnect and discontinue use of such



connection. Notwithstanding the provisions of this section, any person who maintains an illicit connection, as defined in EGMC Section 15.12.030(F), may apply to the City for a permit to continue the connection subject to applicable City standards.

**15.12.160 Negligence or intent not required.**

A violation of the provisions of this article shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an illicit connection or to cause, allow or facilitate any prohibited discharge.

**Article III. Reduction of Pollutants in Stormwater**

**15.12.200 General requirements.**

A. The Administrator may designate as subject activities any activities, including industrial activities, which are identified as potential sources of discharges of pollutants to the City stormwater conveyance system, or for which a requirement has been imposed by the state or federal government for the City to conduct stormwater regulatory activities focused on the subject activity in question.

B. Any person whom the Administrator determines is conducting any subject activity shall prevent or reduce the discharge of pollutants from those activities, to the maximum extent practicable, through the implementation of BMPs in accordance with EGMC Section 15.12.220.

C. The Administrator shall conduct a notification and comment process for designations or determinations made pursuant to subsection (A) of this section.

D. Any determination made by the Administrator pursuant to subsection (B) of this section shall be subject to the provisions for the adoption of regulations set forth in EGMC Section 15.12.230.

**15.12.210 Containment and notification of spills.**

A. Any person owning or occupying premises, or conducting any activity, that has knowledge of any nonstormwater discharge or threatened prohibited discharge from the premises or activity to the City stormwater conveyance system shall immediately take all reasonable action to contain and otherwise minimize any such discharge.

B. The Administrator may designate types of activities where the owner or operator of the activity shall be required to notify the Administrator or the implementing agency within twenty-four (24) hours of the discovery of an actual discharge into the City stormwater conveyance system.

C. For any discharge subject to the reporting requirements of Sections 13271 and 13272 of the State of California Water Code, notification in compliance therewith shall constitute sufficient notification for the purposes of this section.

**15.12.220 Best management practices.**

A. The Administrator may adopt regulations for specified subject activities. Such regulations shall describe best management practices (“BMPs”) which, if implemented by persons conducting such specified activities, shall satisfy the requirements of EGMC Section 15.12.200.

B. Persons conducting subject activities may implement BMPs not contained in the adopted regulations to satisfy the requirement of EGMC Section 15.12.200(B) through either of the following mechanisms:

1. By submitting and receiving prior written approval for the alternative BMPs from the Administrator if he or she determines that the proposed alternative BMPs provide a level of protection from stormwater discharges equivalent to the BMPs contained in the regulations adopted pursuant to subsection (A) of this section; or

2. By implementing alternative BMPs which provide a level of protection from stormwater discharges equivalent to the BMPs contained in the regulations adopted pursuant to subsection (A) of this section.

C. Any alternative BMPs implemented pursuant to subsection (B)(2) of this section shall be subject to review and approval by the Administrator as part of the inspection procedures set forth in Article IV of this chapter. If a person conducting subject activities implements alternative BMPs without the prior written approval of the Administrator and subsequently receives written notice from the Administrator that the alternative BMPs do not provide the required equivalent level of protection from stormwater discharges, the continued implementation of such alternative BMPs shall be deemed to be a violation of the requirements of EGMC Section 15.12.200(B) as of the date of delivery of such notice unless it is ultimately determined pursuant to an administrative appeal pursuant to EGMC Section 15.12.440 that the alternative BMPs provide the required equivalent level of protection from stormwater discharges.

D. Any facility that is in compliance with its state or federal NPDES permit for stormwater discharges for that facility shall be deemed to have met the requirements of EGMC Section 15.12.200(B).

E. The Administrator shall develop regulations for determining when BMPs have been successfully implemented.

### **15.12.230 Administrative rules and regulations.**

A. The Administrator shall have the authority to promulgate regulations for the implementation of this chapter. Prior to the Administrator's initiation of any proposed regulations, the Administrator shall submit a public input plan to the City Council for its approval. The public input plan approved by the City Council shall be generally applicable to the promulgation of regulations by the Administrator.

B. All regulations promulgated by the Administrator shall be consistent with the provisions of this chapter. Any such regulations, or amendments thereof, shall be filed with the City Clerk of the City Council. The City Clerk shall cause announcement of said rules or regulations to be published in a newspaper of general circulation within ten (10) days. Such announcements shall provide a reasonable summary of the content of the rule. In addition, the Administrator shall make a reasonable effort to identify, notify, and provide copies to any activities which are specifically designated by the Administrator as subject to a rule or regulation. However, neither the failure of the Administrator to provide such notice nor the failure to receive individual notice shall exempt an activity from that rule or regulation. No regulations promulgated by the Administrator, or amendments thereof, shall be enforced or become effective until thirty (30) days following the date on which notification of the regulations is published.

C. Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the issuance of such regulation by filing a written notice of appeal pursuant to EGMC Chapter 1.11.

D. Any regulation from which an appeal is filed prior to its effective date shall not become effective until the date of a determination of the appeal. Any regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision which rescinds or modifies the regulation shall apply prospectively.

### **15.12.235 BMP maintenance requirements.**

The Administrator may require a property owner to establish, document, and conduct a maintenance program, subject to approval, for any BMP. This requirement may apply to BMPs required by the City or BMPs that were voluntarily installed pursuant to EGMC Section 15.12.220. Such a maintenance program may be required when the Administrator determines that proper maintenance is necessary to protect public safety, health, infrastructure, or the environment, or to otherwise meet the purposes of this chapter. Maintenance requirements established pursuant to this section must be appropriate for the site conditions and design of BMPs.

## **Article IV. Inspection, Monitoring and Reporting**

### **15.12.300 Scope of inspections.**

A. Prior to commencing any inspection authorized pursuant to this section, the Administrator shall obtain the consent of the owner or occupant of the premises, an administrative inspection warrant or a criminal search warrant. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter including, but not limited to, random sampling, sampling in areas with evidence of stormwater contamination, illicit connections, discharge of nonstormwater to the City stormwater conveyance system or similar factors.

B. The Administrator may enter upon private property to investigate the source of any discharge to any public street, inlet, gutter, storm drain or the City stormwater conveyance system.

C. The Administrator may enter upon private property for the purpose of verifying compliance with the provisions of this chapter, including, but not limited to, the following:

1. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
2. Identifying point(s) of discharge of all wastewater, process water system, pollutants and other discharges from the property;
3. Investigating the natural slope of the premises, including drainage patterns and artificial conveyance systems;
4. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;
5. Locating any illicit connection or the source of any prohibited discharge; and
6. Evaluating implementation of BMPs.

D. For purposes of verifying compliance with the provisions of this chapter, the Administrator may inspect any vehicle, truck, trailer, tank truck or other mobile equipment, or any stationary equipment, which may reasonably be believed to be used by the business for business-related activities and to be associated with industrial sources of pollutants or with nonstormwater discharges.

E. The Administrator may inspect all records of the owner or occupant of any premises relating to chemicals or processes presently or previously occurring on-site, including materials and/or chemical inventories, facilities maps or schematics or diagrams,

material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, monitoring program plans or any other records relating to illicit connections, prohibited discharges or the potential discharge of pollutants to the City stormwater conveyance system. In addition, the Administrator may require the owner or occupant to furnish, within a reasonable time period, copies of all such records.

F. The Administrator may conduct any necessary surveillance, inspect, sample and test any area runoff, soils area (including any groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for the contribution of pollutants to the City stormwater conveyance system. The Administrator may conduct surveillance and investigate the integrity and layout of all storm drain and sanitary sewer system or other pipelines on the premises using appropriate tests, including, but not limited to, smoke and dye tests or video surveys. The Administrator may conduct any necessary surveillance, take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the premises.

G. The Administrator may require regular reports from industrial facilities and construction sites discharging into the City stormwater conveyance system.

H. The Administrator may erect and maintain monitoring and sampling devices for the purpose of measuring any discharge or potential source of discharge to the City stormwater conveyance system.

#### **15.12.330 Reporting requirements.**

A. The Administrator may require any person to report information for purposes related to the goals of this chapter. Required information may include but is not limited to the following: characterization of industrial activities; compliance with this chapter, compliance with state general permit requirements; compliance with administrative enforcement orders or other enforcement actions; discharge monitoring; training; and BMP implementation, effectiveness, and maintenance.

B. The Administrator may require information to be submitted on an as-needed basis.

C. The Administrator may require submitted information to be compiled, summarized, analyzed or organized in a reasonable manner that facilitates its interpretation or other use. As necessary to facilitate the use of information, the Administrator may also specify the medium and format of required submittals.

D. Failure to provide information in a timely manner as required by the Administrator, or knowingly or negligently providing false information, shall be a violation of this chapter.

**15.12.350 Fees.**

The Administrator shall collect such fees as may be authorized by the City Council to provide for the recovery of regulatory costs, including routine inspections and other regulatory functions associated with this chapter. There shall be no fee assessed to appeal the determination that a person conducts any subject activity. Any such fees shall be established by resolution of the City Council.

**Article V. Enforcement**

**15.12.400 Notice of noncompliance.**

A. The Administrator may deliver to the owner or occupant of any premises, or to any person responsible for an illicit connection, prohibited discharge, maintenance of a threatened prohibited discharge, failure to implement BMPs in accordance with EGMC Section 15.12.200(B), or any other violation of this chapter, a notice of noncompliance. The notice of noncompliance shall be delivered in accordance with EGMC Section 15.12.430.

B. The notice of noncompliance shall identify the provision of this chapter which has been violated. The notice of noncompliance shall state that continued noncompliance may result in additional enforcement actions, including the recovery of any costs incurred by the City.

C. The notice of noncompliance shall identify a compliance date that must be met; provided, however, that the compliance date may not exceed ninety (90) days unless the Administrator extends the compliance deadline an additional period not exceeding ninety (90) days when good cause exists for the extension.

**15.12.410 Administrative compliance orders.**

A. The Administrator may issue an administrative compliance order. The administrative compliance order shall be delivered in accordance with EGMC Section 15.12.430. The administrative compliance order may be issued to any of the following:

1. The owner or occupant of any premises requiring abatement of conditions on the premises that cause or may cause a prohibited discharge in violation of this chapter.
2. A person who fails to implement BMPs in accordance with EGMC Section 15.12.200(B).

3. Any person responsible for a prohibited discharge or maintenance of a threatened prohibited discharge.

B. The administrative compliance order may include the following terms and conditions:

1. Specific steps and time schedules for compliance as reasonably necessary to prevent threatened or future unauthorized discharges, including, but not limited to, the threat of any prohibited discharge from any pond, pit, well, surface impoundment, holding or storage area.

2. Specific requirements for containment, cleanup, removal, storage, or proper disposal of any material having the potential to contribute pollutants to stormwater runoff.

3. Specific requirements for the installation of overhead covering.

4. Any terms or conditions reasonably calculated to prevent continued or threatened violations of this chapter.

5. Any other measures necessary or appropriate to fully implement BMPs in accordance with EGMC Section 15.12.200(B).

#### **15.12.420 Cease and desist orders.**

A. The Administrator may issue a cease and desist order. A cease and desist order shall be delivered in accordance with EGMC Section 15.12.430. A cease and desist order may direct the owner or occupant of any premises, or any other person responsible for any violation of this chapter, to take any of the following actions:

1. Immediately discontinue any prohibited discharge to the City stormwater conveyance system.

2. Immediately discontinue any other violation of this chapter.

3. Clean up the area affected by the violation.

B. The Administrator may direct by a cease and desist order that any person immediately cease any activity which may lead to a violation of receiving water limitations.

#### **15.12.430 Delivery of notice.**

Any notice of noncompliance, administrative compliance order, cease and desist order or other enforcement order pursuant to the requirements of this chapter shall be subject to the following requirements:

A. The notice shall state that the recipient has a right to appeal the matter as set forth in EGMC Section 15.12.440.

B. The notice shall state that the recipient or the property owner, or both, may be liable for all enforcement costs incurred by the City in correcting the violation.

C. Delivery shall be deemed complete upon either personal delivery to the recipient or deposit in the U.S. Mail, postage prepaid, for certified first class delivery.

D. Where the recipient of the notice is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property.

E. Where the owner or occupant of any premises cannot be located after reasonable efforts of the Administrator, the notice shall be deemed delivered after posting on the premises for a period of ten (10) business days.

#### **15.12.440 Administrative appeals.**

A. Except as set forth in subsection (B) of this section, any person receiving a notice of noncompliance, a designation as a person who conducts subject activities, an administrative compliance order, or an administrative citation pursuant to EGMC Chapter 1.12, or who is otherwise subject to an adverse determination pursuant to this chapter may appeal the matter by requesting an administrative appeals hearing before an Appeals Hearing Officer pursuant to EGMC Chapter 1.11.

B. An administrative appeals hearing on the issuance of a cease and desist order or following an emergency abatement action shall be held within seven (7) business days following the issuance of the order or the action of abatement, unless the hearing or the time requirement for the hearing is waived in writing by the party subject to the cease and desist order or the emergency abatement. A request for an administrative appeals hearing shall not be required from the person subject to the cease and desist order or the emergency abatement.

C. At any administrative appeals hearing, the administrative appeals officer shall permit any interested party, including, but not limited to, the Administrator and/or the appealing party, to present evidence and argument in support of or against the imposition of the notice of noncompliance, order, designation, determination, administrative citation or abatement action.

#### **15.12.450 Nuisance and abatement.**

A. Any condition in violation of the provisions of this chapter, including, but not limited to, the maintenance or use of any illicit connection or the occurrence of any prohibited



discharge shall constitute a threat to the public health, safety and welfare and is declared and deemed to be a public nuisance.

B. At the request of the Administrator, the City may seek a court order to enjoin or abate the nuisance, or both. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the Administrator shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the premises where the nuisance or threatened nuisance is occurring.

C. At the request of the Administrator, the City may seek an abatement warrant or other appropriate judicial authorization to enter the premises where any nuisance or threatened nuisance is occurring and to abate the condition and restore the area.

D. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Administrator may enter the premises from which the nuisance emanates, abate the nuisance and restore any property affected by the nuisance without prior notice to or consent from the owner or occupant thereof and without judicial warrant.

1. An "imminent danger" shall include, but is not limited to, exigent circumstances created by the dispersal of pollutants, where such pollutants present a significant and immediate threat to the public safety or the environment.

2. Notwithstanding the authority of the City to conduct an emergency abatement action, an administrative hearing pursuant to EGMC Section 15.12.440 shall follow the emergency abatement action.

#### **15.12.460 Administrative civil penalties – Reimbursement of fines imposed upon City – Appeals.**

A. In addition to any other remedies provided by this chapter or any other law, the Administrator is authorized to impose administrative civil penalties in an amount established by resolution of the City Council, pursuant to EGMC Chapter 1.12, upon any person for each violation of this chapter. Each day, or a portion thereof, that a violation continues constitutes a new violation. Administrative civil penalties are subject to the appeal procedures in EGMC Chapter 1.11.

B. In addition to any other remedies provided by this chapter or any other law, the Administrator may also seek and recover reimbursement from any person whose conduct or activity results in any fine, penalty or other charges being imposed upon the City by any authorized federal, state, or local government agency, including, but not limited to, the Central Valley Regional Water Quality Control Board, for violations of the terms of the City's National Pollution Discharge Elimination System ("NPDES") permit or

otherwise, up to the actual amount of the fine, penalty, or charge imposed upon the City. Claims for reimbursement by the City shall be made by written request on forms approved by the Administrator. Claims for reimbursement shall be due and payable as directed by the Administrator in the written request for reimbursement, but in no event shall a claim for reimbursement be due and payable any later than thirty (30) days after presentation of the claim for reimbursement to the responsible person, unless the Administrator finds good cause to allow later payment. Claims for reimbursements by the City are subject to the appeal procedures in EGMC Chapter 1.11.

C. In reaching a decision concerning an administrative civil penalty or a claim of reimbursement in any appeal proceeding under this chapter, the Appeals Hearing Officer shall be guided by factors including, but not limited to, the following: the danger to public health, safety and welfare represented by the violation, recidivism, any economic benefit associated with noncompliance, and any economic impact to the City or the public as a result of the violation.

#### **15.12.470 Criminal penalties.**

A. Any person who negligently or knowingly violates any provision of this chapter, undertakes to conceal any violation of this chapter, continues any violation of this chapter after notice thereof, or fails to implement BMPs in accordance with EGMC Section 15.12.200(B) shall be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 or imprisoned for not more than six months in the Jail, or both.

B. Each day in which a violation occurs and each separate failure to comply with either a separate provision of this chapter, an administrative compliance order, a cease and desist order, or failure to implement BMPs in accordance with EGMC Section 15.12.200(B) shall constitute a separate violation of this chapter punishable by fines or sentences in accordance herewith.

C. The Administrator may authorize specifically designated City employees to issue citations for misdemeanor violations of this chapter pursuant to Section 836.5 of the Penal Code.

#### **15.12.480 Miscellaneous enforcement provisions.**

A. Each and every remedy available for the enforcement of this chapter shall be nonexclusive and it is within the discretion of the Administrator to seek cumulative remedies.

B. The Administrator may request the City to file a civil action in a court of competent jurisdiction seeking an injunction against any threatened or continuing noncompliance

with the provisions of this chapter. Any temporary, preliminary or permanent injunction issued pursuant to this subsection may include an order for reimbursement to the City of all costs incurred in enforcing this chapter, including, but not limited to, costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the City, costs relating to the restoration of the environment and any other costs or expenses authorized by law.

C. The Administrator may request the City to file an action for civil damages in a court of competent jurisdiction seeking recovery of any of the following:

1. All costs incurred in the enforcement of this chapter, including, but not limited to, costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses authorized by law and consequential damages.
2. All costs incurred in mitigating harm to the environment or reducing the threat to human health.
3. Damages for irreparable harm to the environment.

D. The City is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public property or to the City stormwater conveyance system from any violation of this chapter where such violation has caused damage, contamination or harm to the environment, public property or the City stormwater conveyance system.

E. The remedies available to the City pursuant to the provisions of this chapter shall not limit the right of the City or any law enforcement agency to seek any other legal or equitable remedy that may be available to it.

F. Each day in which a violation occurs and each separate failure to implement BMPs in accordance with EGMC Section 15.12.200(B) or to comply with either a separate provision of this chapter, an administrative compliance order, or a cease and desist order shall constitute a separate violation of this chapter punishable by administrative penalties in accordance with this chapter.

## **Article VI. Recovery of Cost of Abatement**

### **15.12.500 Costs of abatement – Confirmation.**

A. When proceedings under this chapter result in the correction of a violation of this chapter or in a final determination that a violation exists subsequent to the date specified in any notice issued pursuant to the provisions of this chapter, the costs of such proceedings incurred by the City may be assessed against the property. Such

costs may include, but are not limited to, those incurred in inspecting property, publication, mailing and posting of notices, conducting hearings, processing appeals and pursuing any judicial action. It is the purpose of this section to allow the assessment against property of costs of proceedings if a violation is corrected in any manner.

B. The Administrator shall keep an account of the administrative and other costs of abatement, and shall submit to the City Council for confirmation an itemized written report showing such costs and their proposed assessment to the respective properties. The report shall be filed with the City Clerk of the City Council not later than fifteen (15) days in advance of the confirmation hearing required below.

C. Upon receipt of the report, the City Clerk of the City Council shall schedule a public hearing to receive protests and confirm the report. A statement of the proposed assessment and notice of the time, date and place of the hearing, together with reference to the report on file with the City Clerk, shall be mailed to the owner or owners of each parcel of property proposed to be assessed shown on the last equalized assessment roll available on the date of mailing of the notice or any other address or addresses ascertained to be more accurate. Such notice shall be mailed not later than fifteen (15) days in advance of the hearing. Notice of the time, date and place of the public hearing by the City Council shall be published once in a newspaper of general circulation of the City. With respect to each property proposed to be assessed for which the name of the owner or owners is not shown on the last equalized assessment roll or no address for an owner is shown on the last equalized assessment roll, the notice shall show the name or names of the owner or owners, if such name or names are shown on the last equalized assessment roll, the assessor's parcel number, the street address of the property, if the property has an address and the address is known to the Administrator, the name of the street or road upon which such property abuts, if the property abuts upon a street or road, the amount of the proposed assessment and reference to the report on file with the City Clerk. Such publication shall be made not later than fifteen (15) days in advance of the hearing.

D. At the time fixed for receiving and considering the report, the City Council shall conduct a public hearing and shall receive and consider any objections from members of the general public or property owners liable to be assessed for the abatement. Written protests or objections shall specify the date, hour and description of the subject property under hearing. The City Council may continue the hearing and delegate to the City Manager or his designee the responsibility of hearing individual protests and submitting a recommendation with respect thereto; provided, that the City Council provides an opportunity for individual consideration of each project upon receipt of the recommendation by the City Manager or his designee. The City Council may modify the report if it is deemed necessary. The City Council shall then confirm the report by motion or resolution.

#### **15.12.510 Costs – Assessments.**

A. If the costs as confirmed are not paid within thirty (30) days of the date of mailing of the notice or date of publication pursuant to EGMC Section 15.12.500, such costs shall be assessed against the parcel of land pursuant to Section 25845 of the Government Code, and shall be transmitted to the Tax Collector for collection and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for *ad valorem* taxes.

B. If subsequent to the mailing of the notice of noncompliance and prior to transmittal of the notice of unpaid costs to the Tax Collector for collection as set forth in subsection (A) of this section, the property subject to the notice of noncompliance is sold, or title otherwise transferred to a bona fide purchaser, said costs shall be the responsibility of the owner of record as of the date said notice of noncompliance was placed in the United States postal system or posted on the property.

C. In addition to assessing the unpaid costs as provided in subsection (A) of this section, the Tax Collector or his designated representative may pursue any remedy provided by law for collection of the unpaid costs.

#### **15.12.520 Treble costs.**

Pursuant to Section 25845.5 of the Government Code, upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner is responsible for a condition in violation of this chapter that may be abated pursuant to Section 25845 of the Government Code, a court may order the owner to pay treble the costs of abatement.

#### **15.12.530 Hearing of protests.**

Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the Administrator together with any such protests or objections. The City Council may make such revision, correction or modification of the report or the charge as it may deem just; and in the event the City Council is satisfied with correctness of the charge, the report of the Administrator (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge and on all objections or protests shall be final and conclusive.

#### **15.12.540 Assessment for summary abatement.**

Where the charge to be made is the result of summary abatement pursuant to EGMC Section 15.12.460(C), the City Council may determine whether or not the action to abate was proper, and may confirm the charge or not as it may deem proper.

#### **15.12.550 Time for contest of assessment.**

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is ordered to be placed upon the assessment roll as provided herein.

#### **15.12.560 Filing copy of report with *County Auditor*.**

A certified copy of the assessment shall be filed with the County Auditor/Controller on or before August 1st. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the County Assessor for the current year.

### **Article VII. Commercial and Industrial Facilities**

#### **15.12.600 Findings.**

A. One of the requirements of the municipal stormwater permit (NPDES No. CAS0082597) to which the City is a co-permittee is to track, inspect, and ensure compliance with stormwater ordinances at certain commercial and industrial facilities.

B. The Sacramento County Environmental Management Department (EMD), as both the state-designated Certified Unified Program Agency (CUPA) and the Environmental Health Agency for Sacramento County, is currently tracking and inspecting the majority of commercial and industrial facilities subject to the provisions of the municipal stormwater permit.

C. Utilizing the EMD to fulfill the commercial and industrial inspection program requirements under the municipal stormwater permit will result in greater program efficiency, reduced program costs, reduced impacts to the regulated business community, and is in the best interest of the City.

D. On March 17, 2004, the City Council authorized the City Manager to enter into an agreement with the EMD for fulfilling the NPDES permit inspection requirements with respect to commercial and industrial facilities.

E. Under the agreement, the City is required to amend the stormwater ordinance as necessary to authorize the county EMD to implement the stormwater compliance program for commercial and industrial facilities. The City must make any necessary amendments to the stormwater ordinance to the extent necessary to authorize the EMD to:

1. Conduct all necessary inspections or reinspections of regulated facilities within the incorporated City area;
2. Take any necessary enforcement actions as authorized by the Elk Grove Municipal Code and consistent with a City-approved enforcement plan;
3. Investigate and follow up referred complaints at eligible facilities;
4. Establish and collect fees necessary to recover program implementation costs.

F. The term of the agreement is July 1, 2004, through June 30, 2010, unless sooner terminated or extended by the City and County.

**15.12.610 Purpose and intent.**

A. The purpose of this article is to fulfill the requirements of the agreement between the City and Sacramento County, authorized by the City Council on March 17, 2004, whereby the county shall assume responsibility for providing tracking, inspection, and enforcement of the City's stormwater ordinance with respect to commercial and industrial facilities within the incorporated City area as required by the municipal stormwater permit.

B. It is the intent of the City Council in adopting this article to provide the necessary amendments in order to authorize the county to accomplish the following goals:

1. Conduct all necessary inspections or reinspections of regulated facilities within the incorporated City area;
2. Take any necessary enforcement actions as authorized by the Elk Grove Municipal Code and consistent with a City-approved enforcement plan;
3. Investigate and follow up referred complaints at eligible facilities;
4. Establish and collect fees necessary to recover program implementation costs.

**15.12.620 Delegation of authority to county EMD.**

A. Pursuant to the agreement authorized by the City Council on March 17, 2004, whereby the County shall assume responsibility for tracking, inspecting, and enforcing the City's stormwater ordinance at certain commercial and industrial facilities specified in the municipal stormwater permit, the term "Administrator," as used in this chapter, shall also mean the Director of the Sacramento County Environmental Management Department and his or her designees.

B. Any administrative or civil enforcement by the Director of the Sacramento County EMD or his or her designees of any provision of this chapter under this article shall be governed by and conducted pursuant to this chapter.

C. Sacramento County may establish and collect from commercial and industrial facilities located within the City such fees as may be necessary to cover the actual costs incurred by Sacramento County to include these facilities in its commercial and industrial compliance program; provided, that the fees are established and collected in accordance with the provisions of the agreement and all applicable legal requirements.

D. The delegation of authority to Sacramento County under this article is limited to only that required by the March 17, 2004, agreement, as may be necessary to allow the Director of the County EMD to track, inspect, and ensure compliance with the City's stormwater ordinance at commercial and industrial facilities as required under the municipal stormwater permit.

**15.12.630 Expiration of this article.**

The provisions of this Article VII shall remain in effect only to the extent that the March 17, 2004, agreement between the City and County EMD, or any successor agreement, remains in effect. Upon expiration of the agreement, or any successor agreement, the provisions of this article shall expire.

**TITLE 16**

**BUILDINGS AND CONSTRUCTION**

**Chapters:**

**16.02 Uniform Administrative Code**

**16.04 Building Code**

**16.08 Auto Courts, Resorts and Motel**

**16.16 Owner and Tenant Responsibilities**

**16.18 Nuisance Code**

**16.20 Substandard Dwellings**

**16.21 Sacramento County Hotel/Motel Compliance Assurance Program**

**16.22 Dangerous Buildings Code**



- 16.23 Boarding of Vacant Structures in Abatement Proceedings**
- 16.24 Plumbing Code**
- 16.28 Electrical Code**
- 16.32 Mechanical Code**
- 16.34 Building Conservation Code**
- 16.36 Swimming Pools**
- 16.40 Moving Buildings**
- 16.44 Land Grading and Erosion Control**
- 16.50 Regulation of Construction of Residential Dwellings in Impacted School Attendance Areas**
- 16.70 Access Controls**
- 16.81 East Franklin Facilities Fee**
- 16.82 Laguna Ridge Park Fee**
- 16.84 Capital Facilities Fees**
- 16.85 Elk Grove Fire Fee**
- 16.86 Laguna Stonelake Public Facilities Financing Plan Development Impact Fee Program**
- 16.88 Laguna West/Lakeside Park Development Fee**
- 16.89 Fees on Non-Residential Construction to Fund Very Low Income Housing**
- 16.90 Construction Permit Fees**
- 16.95 Development Impact Fees to Finance Roadway Facilities Cost**
- 16.96 Development Impact Fees for Measure A Transportation Improvements For Citywide Benefit District**
- 16.100 Deferral or Waiver of Certain Residential Impact Fees**
- 16.120 Deferral of Certain Impact Fees**
- 16.130 Swainson's Hawk Impact Mitigation Fees**

## **CHAPTER 16.02**

### **CALIFORNIA ADMINISTRATIVE CODE**

Sections:

16.02.110 Title

16.02.120 Purpose

16.02.130 Adoption of the Administrative Code 16.02.140 Scope

16.02.150 Definitions

16.02.160 Amendments to Sections 103 Through 109.6 of Appendix 1 of the 2007 Edition of the California Building Code, Part 2, Title 24, of the California Code of Regulations

#### **16.02.110 TITLE.**

These regulations shall be known as the "Administrative Code" (hereinafter referred to as "Code").

#### **16.02.120 PURPOSE.**

The purpose of this Code is to provide for the uniform administration and enforcement of the technical codes adopted by this jurisdiction.

The purpose of this Code and the technical codes is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Code.

#### **16.02.130 ADOPTION.**

In order to regulate the erection, construction, enlargement, alteration, repair, removal, demolition, conversion, occupancy, equipment, wiring, plumbing, use, height, area and maintenance of all buildings and structures within the City of Elk Grove the 2007 Edition of the California Administrative Code, published by the International Code Council (ICC), as adopted by the Building Standards Commission of the State of California and codified in the California Building Standards Code at Title 24, Part 1, of the California Code of Regulations, except as specifically repealed or amended by ordinance of the City of Elk Grove, is hereby adopted and made a part of this Chapter as though set forth in full herein. A true and correct copy of the 2007 California Administrative Code as

adopted by this section shall be on file in the office of the City Building Official for examination and use by the public.

#### **16.02.140 SCOPE.**

The provisions of this Code shall serve as the administrative, organizational, and enforcement rules and regulations for the technical codes that regulate the site preparation and construction, alteration, moving, demolition, repair, use, and occupancy of buildings and structures including but not limited to docks, marinas, boathouses, signs, and building service equipment within this jurisdiction.

#### **16.02.150 DEFINITIONS.**

For the purposes of this Chapter, the following definitions shall apply:

A. Wherever the word "code" is used in Chapter 1 of the California Building Code, Part 2, Title 24, of the California Code of Regulations, it shall mean the Administrative Code.

B. "Building Official" is the officer or other designated authority charged with the administration and enforcement of this Code. The terms "Building Safety and Inspection," "administrative authority," and "City" are to be considered synonymous respectively with the terms "Building Official" and "Building Department" as they appear in this Code or the technical codes.

C. "Building Service Equipment" refers to the plumbing, mechanical, and electrical equipment including piping, wiring, fixtures, and other accessories that provide sanitation, lighting, heating, ventilation, cooling, refrigeration, and fire fighting facilities essential for the habitable occupancy of the building or structure for its designated use and occupancy.

D. "Technical Codes" refers to the following codes adopted by the City of Elk Grove, which contain the provisions for design, construction, alteration, addition, repair, removal, demolition, use location, occupancy, and maintenance of all buildings and structures and building service equipment as herein defined:

Elk Grove Municipal Code, Chapter 16.04, Building Code (hereinafter referred to as "Building Code").

Elk Grove Municipal Code, Chapter 16.24, Plumbing Code (hereinafter referred to as "Plumbing Code").

Elk Grove Municipal Code Chapter 16.28, Electrical Code (hereinafter referred to as "Electrical Code").

Elk Grove Municipal Code, Chapter 16.32, Mechanical Code (hereinafter referred to as "Mechanical Code").

Elk Grove Municipal Code, Chapter 16.36, Swimming Pool Code (hereinafter referred to as "Swimming Pool Code").

E. "UBC" is defined as the most recent edition of the Building Code as referenced in Elk Grove Municipal Code, Chapter 16.04.

**104.2.8.3 Limits on repair for R-3 and U occupancies.** When the scope of work for R-3 and U Occupancies involves the removal or replacement of fifty (50%) percent or greater of the linear length of the walls of the building (exterior plus interior) within a one (1) year period, the project shall be considered new construction; and the entire building shall comply with all current codes.

**104.2.11 Unsafe buildings, structures, or building service equipment.** All buildings, structures, or building service equipment regulated by this Code and the technical codes which, after inspection by the administrative authority, are determined to be substandard and/or dangerous, shall be governed by EGMC Chapter 16.20, "Substandard Dwelling" as enforced by Elk Grove Community Enhancement Code Compliance and EGMC Chapter 16.22, "Dangerous Building Code."

## **SECTION 105 - BOARD OF APPEALS**

**105.010 General.** Whenever the Building Official disapproves an application or refuses to grant a permit application, or when it is claimed that the provisions of the code do not apply or that the true intent has been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Building Official within thirty (30) days from the date of the decision being appealed. Such appeal shall be submitted in writing to the Building Official. The fee required to file an appeal shall be set forth by resolution of the City Council. In order to hear and decide such appeals, there shall be and is hereby created a Construction Board of Appeals, pursuant to Section 105 of the 2001 California Building Code.

### **105.020 Membership.**

A. The Construction Board of Appeals shall consist of five (5) members who are qualified by experience and training to pass on matters pertaining to building construction and who are not contractors to, or employees of the City. The members of the Board shall be appointed by a committee consisting of the City Manager, the Public Works Director and City Attorney or their designated representatives.

B. At the time of their appointment to the Board, the Board shall have the following representation:

- 1.General contractor
- 2.Architect
- 3.Civil or Structural Engineer
- 4.Mechanical or Plumbing Contractor
- 5.Electrical Contractor

C. The Board shall annually select a chairperson from its appointed members.

D. The Building Official shall be an ex-officio member and shall act as the secretary of the Construction Board of Appeals but shall have no vote on any matter before the Board.

**105.030 Terms.** Terms for members other than ex-officio or advisory members of the Construction Board of Appeals shall be four (4) years. The terms for the General Contractor, Civil or Structural engineer and Mechanical or Plumbing Contractor shall expire every other even-numbered year with the terms for the Architect and Electrical Contractor expiring on alternating even numbered years.

**105.040 Vacancies.** Vacancies shall be filled by appointment for the unexpired portion of the term.

**105.060 Attendance.** Any appointee member of the Construction Board of Appeals who fails to attend three consecutive board meetings without notifying the secretary shall automatically lose the appointed membership. It shall be the duty of the board chairperson to report to the City Council any appointee member who has failed to attend three (3) consecutive meetings without such notification.

**105.070 Secretary.** The secretary shall have no vote.

**105.080 Meetings.** The Construction Board of Appeals shall hold meetings as needed in compliance with the Brown Act. Agendas for each meeting of the Construction Board of Appeals shall be posted at least seventy-two (72) hours in advance of the meeting, pursuant to Government Code Section 54954.2(a).

**105.090 Rules and Regulations.** The Construction Board of Appeals shall, after consultation with the City Attorney's office, adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Building Official, and may recommend to the City Council such new legislation as is consistent therewith. Decisions and findings shall be filed in the office of the Building Official for public inspection.

**105.100 Granting Modifications.** Whenever there are practical difficulties involved with carrying out the provisions of the Building, Electrical, Mechanical, Plumbing, Swimming Pool, and Sign codes of the City of Elk Grove, the Construction Board of Appeals may grant modifications for individual cases, provided it is found that special circumstances make strict adherence to this code impractical and that the modification is in conformity with the intent and purpose of the Code and that such modification does not reduce any fire protection requirements or any degree of structural integrity. The Construction Board of Appeals shall formulate and enforce any implementing rules and regulations concerning the use of materials and installations as are deemed necessary to supplement provisions of this ordinance. Such rules and regulations will require a thirty (30) day public notice prior to their effective date.

**105.110 Limitations of Authority.** The Construction Board of Appeals shall have no authority relative to interpretation of the administrative provisions of the currently adopted California State Building, Plumbing, Mechanical and Electrical codes or be empowered to waive requirements of these codes.

**105.120 Right to Appeal Decision of Construction Board of Appeals.** Any right to appeal a decision of the Board shall be pursuant to State Law.

**106.1.1 Certificate of Release.** Prior to issuance of a permit, a Certificate of Release shall be obtained from the appropriate fire protection district for the following:

1. Any new dwelling when there is no public water supply source with a distribution system conforming to County standards.

2. Any new dwelling, covered porch/patio, and attached garage three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet or greater.

Any new dwelling with a private access road.

4. Where the furthest point of the habitable structure is more than one hundred fifty (150' 0") feet from the public road.

5. All commercial projects and multi-family dwellings.

6. Existing structures that undergo an alteration or addition that results in an increase of fifty (50%) percent or more, and the final total area is over three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet.

**106.2 Work Exempt from Permit.** A permit shall not be required for the types of work in each of the separate classes of permit as listed below. Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be

done in violation of the provisions of the technical codes or any other laws or ordinances of this jurisdiction.

**106.2.1 Building permits.** A building permit shall not be required for the following:

**Item 1.** One story detached residential accessory structures used as tool or storage sheds, playhouses, and similar uses provided the structure is not located in a maintenance easement, on a public utility easement, or in front and side street setbacks as required by the Zoning Code. The floor area shall not exceed one hundred twenty (120 ft<sup>2</sup>) square feet in area with not more than twenty-four (24") inches of overhang extending beyond the exterior wall of the structure. The location on the property shall be a minimum of three (3' 0") feet from the dwelling and other accessory building or structures on the site including any horizontal or vertical projections. The structure shall not exceed nine (9' 0") feet in height measured from the adjacent adjoining ground.

**Item 2.** Fences not over six (6' 0") feet in height.

**Item 3.** Oil derricks.

**Item 4.** Movable cases, counters, and partitions not over five feet nine inches (5' 9") high.

**Item 5.** Retaining walls that are not over four (4' 0") feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

**Item 6.** Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one.

**Item 7.** Platforms, decks, walks, and driveways not more than thirty (30") inches above grade and not over any basement or story below, accessory to a Group R, Division 3 occupancy and not required to be on an accessible path of travel.

**Item 8.** Painting, papering, and similar finish work.

**Item 9.** Temporary motion picture, television, and theater stage and scenery.

**Item 10.** Window awnings supported by an exterior wall of Group R, Division 3, and Group U Occupancies when projecting not more than fifty-four (54") inches.

**Item 11.** Prefabricated swimming pools accessory to Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed five thousand (5,000) gallons.

**106.2.2 Plumbing permits.** A plumbing permit shall not be required for the following:

**Item 1.** The stopping of leaks in drains, soil, waste or vent pipes, provided, however, that should any concealed trap, drainpipe, soil, waste or vent pipe become defective and it becomes necessary to remove and replace the same with new material, the same shall be considered as new work and a permit shall be procured and inspections made as provided in the City Plumbing Code.

**Item 2.** The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures nor for the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

**106.2.3. Electrical permits.** An electrical permit shall not be required for the following:

**Item 1.** Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by the City Electrical Code.

**Item 2.** Repair or replacement of fixed motors, transformers, or fixed approved appliances of the same type of rating in the same location within Group R, Division 3 Occupancies.

**Item 3.** Temporary decorative lighting within Group R, Division 3 Occupancies.

**Item 4.** Repair or replacement of electrodes or transformers of the same size and capacity for signs or outline lighting.

**Item 5.** Temporary wiring for experimental purposes in suitable experimental laboratories.

**Item 6.** The wiring for temporary theater, motion picture, or television stage sets.

**Item 7.** Low-energy power, control, and signal circuits of Classes II and II as defined in the City Electrical Code.

**Item 8.** A permit shall not be required for the installation, alteration, or repair of electrical wiring, apparatus, or equipment or the generation, transmission, distribution, or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility.

**106.2.4 Mechanical permits.** A mechanical permit shall not be required for the following:



**Item 1.** Any portable heating appliance.

**Item 2.** Any portable ventilating equipment.

**Item 3.** Any portable cooling unit.

**Item 4.** Any portable evaporative cooler.

**Item 5.** Any closed system of steam or hot or chilled water piping within any heating or cooling equipment regulated by the City Mechanical Code.

**Item 6.** Replacement of any component part or assembly of an appliance that does not alter its original approval and complies with other applicable requirements of the technical codes.

**Item 7.** Any refrigerating equipment that is part of the equipment for which a permit has been issued pursuant to the requirements of the technical codes.

**106.2.5 Sign permits.** A sign permit shall not be required for the following:

**Item 1.** The changing of the advertising copy or message on a painted or printed sign only. Except for theater marquees and similar signs specifically designed for the use of replaceable copy, electrical signs shall not be included in this exemption.

**Item 2.** Painting, repainting, or cleaning of an advertising structure or the changing of the advertising copy or message thereon shall not be considered an erection or alteration that requires a sign permit unless a structural change is made.

**Item 3.** Temporary signs:

(a) Real estate signs allowed per EGMC Section 23.62.040 of the Zoning Code.

(b) Temporary construction signs, signs identifying architects, landscape architects, engineers, contractors, or builders provided the signs are located on the construction site and the signs do not exceed 4 square feet in area.

(c) Political, religious, and civic campaign signs.

(d) Promotional signs.

**106.4.4 Expiration.** Every permit issued by the Building Official under the provisions of the technical codes shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of such permit or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty (180) days. Before such work can be recommenced, the

permit shall be renewed. The fee for renewal shall be one-half (0.5) the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year. In order to renew action on a permit after the building or work has been suspended or abandoned or the permit has been expired for a period exceeding one (1) year, the permittee shall pay a new full permit fee. Permits deemed to have been expired shall be subject to all permit related fee increases and new fees in effect at the time of permit renewal as applicable subject to the discretion of the Building Official.

Permits will be deemed to have expired if there has been no inspection of work within a one hundred eighty (180) day period. When the work is not ready for a required inspection within one hundred eighty (180) days of the last inspection, the permittee must request a progress inspection to keep the permit active.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

**107.2 Permit Fees.** The fee for each permit shall be that fee prescribed in EGMC Chapter 16.90.

The determination of value or valuation under any of the provisions of this Code shall be made by the Building Official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems, and any other permanent equipment.

**107.3 Plan Review Fees.** When submittal documents are required by Section 106.3.2, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be that fee prescribed in EGMC Chapter 16.90.

The plan review fees specified in this Section are separate fees from the permit fees specified in Section 107.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review, or when the project involves a deferred submittal item as defined in Section

106.3.4.2, an additional plan review fee shall be charged at the rate prescribed in EGMC Chapter 16.90.

**107.4 Expiration of Plan Review.** Applications for which no permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding one hundred eighty (180) days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

**107.5.2 Investigation Fee.** An investigation fee, in addition to the total permit fee, shall be collected whether or not a permit is then or subsequently issued, provided, however, that this provision shall not apply to emergency work when it is proved to the satisfaction of the administrative authority that such work was urgently necessary and that it was not practical to obtain a permit before commencement of the work. In all such cases, a permit must be obtained as soon as it is practical to do so; and, if there is an unreasonable delay in obtaining such permit, the investigation fee as herein provided shall be charged. The investigation fee shall be the amount of the total permit fee prescribed in EGMC Chapter 16.90. The payment of such investigation fee shall not exempt any person from compliance with other provisions of this Code, the technical codes, or from any penalty prescribed by law.

**107.6 Fee Refunds.** The Building Official may authorize the refunding of any fee paid hereunder that was erroneously paid or collected.

The Building Official may authorize the refunding of not more than eighty (80%) percent of the total permit fee paid when no work has been done under a permit issued in accordance with this Code.

Where no plan review fee was required, the Building Official may authorize the refunding of not more than eighty (80%) percent of the total permit fee paid when no work has been done under a permit issued in accordance with this Code.

The Building Official may authorize the refunding of not more than eighty (80%) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is commenced.

The Building Official shall not authorize the refunding of any fee paid except upon written application filed by the original applicant not later than one hundred eighty (180) days after the date of fee payment.

**Section 108.2. Inspection Record Card.** Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder has posted or otherwise made available the building permit such as to allow the Building Official to conveniently make the required entries thereon regarding inspection of the work. The approved plans and all correction notices must be available on the jobsite with the building permit. The building permit, approved plans and correction notices shall be maintained available by the permit holder until final approval has been granted by the Building Official.

**108.8 Reinspections.** A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not completely ready or when previous corrections called for are not made; when the job address is not clearly posted and visible from the street or the front of the building; when there is a lack of access to the work to be inspected; when the building permit is not posted or made available on the job site; when the approved plans are not readily available to the inspector; when and any previous correction notice(s) are not available on the jobsite; and for deviating from plans requiring the approval of the Building Official.

This section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspections before the job is completely ready for such inspection.

To obtain a reinspection, the applicant shall file an application therefore in writing on a form furnished for that purpose and pay the reinspection fee in accordance with EGMC Chapter 16.90.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

#### **108.9 Connection to Utilities.**

**108.9.1 Energy connections.** No person shall make connections from a source of energy, fuel, or power to any building service equipment that is regulated by the technical codes and for which a permit is required by this Code until approved by the Building Official.

**108.9.2 Temporary connections.** The Building Official may authorize the temporary connection of the building service equipment to the source of energy, fuel, or power for the purpose of testing building service equipment or for use under a temporary Certificate of Occupancy.

**109.4.1 Letter of completion.** The Building Official may issue a letter of completion where the building is not going to be immediately occupied.

## **CHAPTER 16.04**

### **BUILDING CODE\***

Sections:

16.04.010 Title.

16.04.020 Purpose.

16.04.030 Adoption of the International Building Code.

16.04.040 Definitions.

#### **16.04.010 TITLE.**

This chapter shall be known and cited as the "Elk Grove City Building Code" (hereinafter referred to as "Code").

#### **16.04.020 PURPOSE.**

The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, use and occupancy, location and maintenance of all building and structures within this jurisdiction, and certain equipment specifically regulated herein.

#### **16.04.030 ADOPTION OF THE INTERNATIONAL BUILDING CODE.**

In order to regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, wiring, plumbing, use, height, area and maintenance of all buildings and structures within the City, the 2007 Edition of the California Building Code, Title 24, Part 2 Volumes 1 and 2, Published by the International Code Council (ICC) and all its administrative sections, appendices, and amendments, as adopted by the Building Standards Commission of the State of California and codified at Title 24, Part 2 in the California Code of Regulations, except as specifically repealed or amended by ordinance of the City of Elk Grove, is hereby adopted and made a part of this Chapter as though set forth in full herein. A true and correct copy of the 2007 California Building Code as adopted by this section shall be on file in the office of the City Building Official for inspection by the Public.

#### **16.04.040 DEFINITIONS.**

A. The International Building Code, 2006 Edition, as referenced in Sections 17922(a) and 18938(b) of the 2007 State Code, and the IBC Appendices are published by the International Code Council.

B. As used in this Chapter, the word "Code" means Elk Grove City Building Code.

### **Chapter 16.08**

#### **AUTO COURTS, RESORTS AND MOTELS**

Sections:

16.08.010 Provisions adopted.

16.08.020 Administration.

16.08.030 Adoption of amendments.

16.08.040 Exceptions.

#### **16.08.010 Provisions adopted.**

There is adopted by reference, as the minimum building regulations in the City for auto courts, resorts and motels, the provisions of Part 2.1 of Division 13 of the Health and Safety Code of the state, and the rules and regulations to implement, interpret and make specific the provisions of Part 2.1 of Division 13 of the Health and Safety Code, as such rules and regulations are contained in Article VI of Chapter 9 of Title 8 of the California Administrative Code, with such reservations and additions approved by the City Council as are hereinafter set forth.

#### **16.08.020 Administration.**

The provisions of the aforementioned Part 2.1 of Division 13 of the Health and Safety Code, and the rules and regulations contained in Article VI of Chapter 9 of Title 8 of the California Administrative Code, shall be administered and enforced by the building inspection section of the division of construction and buildings of the Public Works Department, and the sanitation division of the County Health Department, and the name of the building inspection section or the sanitation division shall be substituted for the name of the Division of Housing of the State Department of Industrial Relations as the administering and enforcing agency where such substitution may reasonably be made

in those provisions, and in the areas of jurisdiction of the building inspection section and sanitation division.

**16.08.030 Adoption of amendments.**

Any amendments, alterations or revisions of the provisions of Part 2.1 of Division 13 of the Health and Safety Code, or the rules and regulations contained in Article VI of Chapter 9 of Title 8 of the California Administrative Code, shall be deemed to have been automatically adopted by the City Council with like effect as though they were set forth in this chapter; except the City Council may, by ordinance, exclude, alter or change any such amendments, alterations or revisions from operation or effect in the City of Elk Grove by specifically so providing.

**16.08.040 Exceptions.**

The reservations and additions to the aforementioned provisions of the Health and Safety Code and California Administrative Code which are approved by the City Council are hereafter stated as follows:

Section 18602, Subdivision (c), of the Health and Safety Code shall be amended to read as follows:

Section 18602(c) Annual Permit to operate fee. Twenty and no/100<sup>ths</sup> (\$20.00) Dollars.

**Chapter 16.16**

**OWNER AND TENANT RESPONSIBILITIES**

Sections:

16.16.010 Purpose.

16.16.020 Occupant responsibility.

16.16.030 Owner responsibility.

16.16.040 Enforcement.

16.16.050 Penalties.

### **16.16.010 Purpose.**

The purpose of this chapter is to direct the attention of the occupants of dwellings to certain obligations that they have in respect to the maintenance of conditions in those dwellings and to provide a procedure wherein certain deficiencies in those conditions may be brought to the attention of the occupant along with methods of correcting those deficiencies. The penalties are provided as a deterrent to those who would reject this informational process through gross indifference, active disregard, or willful refusal to comply.

### **16.16.020 Occupant responsibility.**

An occupant of a dwelling unit shall not willfully:

- A. Allow that part of the dwelling unit which he occupies and controls to become or remain in an unsafe or unsanitary condition;
- B. Allow plumbing and other fixtures, whether or not supplied by the owner, to become or remain in an unsafe or unsanitary condition. If the fixtures are supplied by the owner, the occupant shall use reasonable care in the proper use and operation thereof;
- C. Allow any insects, rodents or other pests to infest the dwelling unit, so as to render it unsafe or unsanitary, when no other dwelling unit in the residential building is so infested, and the owner has provided a reasonably insect-proof and rodent-proof building;
- D. Dispose of garbage or other refuse in other than an approved garbage receptacle. When approved garbage receptacles are not provided by the owner, it is the responsibility of the occupant to provide approved garbage receptacles;
- E. Place on the premises any material which creates an unsafe or unsanitary condition;
- F. Place or maintain in or about the premises any furniture, equipment, material, debris or junk harboring insects, rodents or pests to such extent as to render the premises or surrounding dwelling units unsafe or unsanitary;
- G. Permit any dwelling unit let to him to be occupied so that any occupancy or use resulting therefrom violates any of the provisions of this chapter.

### **16.16.030 Owner responsibility.**

This chapter shall not be construed as relieving the owner of any responsibility to the occupant imposed upon the owner by any applicable ordinance or law, even though:

- A. An obligation is also imposed upon the occupants; or



B. The owner has, by agreement, imposed upon the occupant the duty of furnishing required equipment or of complying with applicable ordinances or laws.

**16.16.040 Enforcement.**

The provisions of this chapter shall be enforced by the City Manager or his or her designee.

**16.16.050 Penalties.**

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**Chapter 16.18**

**NUISANCE CODE**

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16.18.100 Intent/purpose.

**Article II. Definitions**

16.18.200 General definitions.

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- 16.18.523 Inspections pursuant to California Fire Code.
- 16.18.524 Inspections pursuant to Uniform Swimming Pool, Spa, and Hot Tub Code.
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## **Article I. Intent/Purpose**

### **16.18.100 Intent/purpose.**

The purposes of this chapter are to provide a just, equitable and practicable method for preventing, discouraging and/or abating certain conditions which endanger the life, limb, health, property, safety or welfare of the general public and to provide City staff with enforcement regulations that can be effectively applied and administered in a fair, expedient, and cost-efficient manner.

## **Article II. Definitions**

### **16.18.200 General definitions.**

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings ascribed to them in this section:

“Abandoned,” applied to a building, means a building that is unoccupied and is in such a state of neglect that a reasonable person would believe that the building has not been used for its intended, lawful purpose and/or has not been lawfully occupied for an extended period of time.

“Abandoned,” applied to real property, means real property that is vacant and undeveloped, and/or real property that has not been lawfully developed and/or improved and which is more than two (2) years delinquent in payment of the assessed real property taxes owing upon such property.

“Abandoned,” applied to a vehicle, means the status of a vehicle or part thereof when the vehicle owner has ceased to assert or exercise any interest, right or title therein without intent to resume or reassert such interest, right or title.

“Abatement” means the removal of a certain condition or conditions which are detrimental to, or endanger the life, limb, health, property, safety or welfare of, the general public.

“Administrative appeals decision” means a written decision rendered by an Appeals Hearing Officer following an administrative appeal hearing conducted pursuant to EGMC Chapter 1.11.

“Administrative Appeals Officer” or “Appeals Hearing Officer” means the individual who shall conduct administrative appeals hearings and render decisions pursuant to the administrative appeal procedures set forth in EGMC Chapter 1.11.

“Administrative citation” means a formal notice that is issued by a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer to a person who has committed an infraction or misdemeanor violation, in lieu of issuing a criminal field citation or filing a criminal complaint.

“Assessment” means the special assessment which may be assessed against a parcel of land as authorized by Section 38773.5 of the Government Code to recover the City’s cost of abatement of a public nuisance.

“Building Official” means the individual designated by the City Manager as the person authorized to serve as the City’s Building Official for the purposes of administering various uniform codes, including, but not limited to, the building, administrative, plumbing, mechanical, electrical, abatement of dangerous buildings, sign and swimming pool, spa and hot tub codes.

“Building permit” means the permit granted by a ministerial process which permits the construction or modification of a building or structure in accordance with the municipal code and applicable statutes, codes, rules and regulations.

“Certificate of occupancy” means the certificate required by the Uniform Building Code and administered by the Building Official or his or her designee as may be authorized by law indicating that work has been completed in compliance with building and zoning codes.

“City Manager” means the City Manager or his or her designee.

“Community Enhancement Inspector” means those individuals employed by the City and/or designated by the Community Enhancement Manager or his or her designee to conduct inspections and to take such actions as may be required by the provisions of this chapter for the purpose of enforcing certain prescribed provisions of the municipal code and all applicable statutes, rules, codes and regulations.

“Community Enhancement Manager” means the individual designated by the City Manager to cause inspections and to take such actions as may be required by the provisions of this chapter for the purpose of enforcing certain prescribed provisions of the municipal code, and all applicable statutes, rules, codes and regulations.

“Declaration” means the formal document written by an individual under penalty of perjury describing the individual’s observations, actions, and/or investigation.

“Enforcement Officer” means City department heads and their designees, Police Officers, and any person within the City authorized by this code or by the City Manager or his designee in writing to enforce compliance with the requirements of this code.

“Field citation” means a document that is issued by a Police Officer or other authorized enforcement officer to a person who has been arrested for committing an infraction or misdemeanor violation, which may be signed by the violator as a promise to appear in court at a designated date and time, which, together with sufficient evidence of the violator’s identity, shall permit the violator to avoid being taken into custody.

“Garbage” means any putrescible animal, fish, fowl, food, fruit or vegetable matter resulting from the cultivation, preparation, storage, handling, decay or consumption of the substance.

“Junk” means any cast-off, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn-out or wrecked object, thing or material, including but not limited to those composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fiber, glass, plaster, plaster of paris, rubber, terra cotta, wool, cotton, cloth, canvas, wood, metal, sand, organic matter or other substance, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, trimmings from plants or trees, cans, bottles and barrels.

“Legal or equitable interest” means possessing a legal or equitable interest in real property, including but not limited to a leasehold interest.

“Lien” means the legal document generally recorded against real property to secure the payment of a debt.

“Lien holder” means possessing a legal or equitable interest in a vehicle owned by a person registered with the State Department of Motor Vehicles as the owner of the vehicle.

“Litter” means an accumulation of garbage, rubbish and junk and all other waste material dangerous, injurious, blighted, or unsightly to neighboring property or to the health and safety of the general public.

“Municipal code” or “code” means the Elk Grove Municipal Code and all applicable statutes, rules, codes and regulations adopted and incorporated therein by reference through a duly adopted ordinance or resolution of the City Council.

“Notice and order” means a formal notice informing a party about the existence of a certain condition or situation which constitutes an infraction or misdemeanor violation of the municipal code, a public nuisance, or a violation of any applicable statute, rule, code or regulation.

“Owner” means any person having a legal or equitable interest in property. “Owner,” applied to a building or land, shall include any part owner, joint owner, tenant, tenant in

common, or joint tenant, of the whole or a part of such building or land. "Owner," applied to a vehicle, means the person registered with the State Department of Motor Vehicles as the owner of the vehicle.

"Permit" means a document issued by the City which allows a use, activity, event, or structure in accordance with the municipal code and applicable statutes, codes, rules and regulations.

"Person" means and includes any person, firm, association, organization, partnership, business trust, company or corporation.

"Planning Commission" means the Planning Commission of the City of Elk Grove.

"Polluted water" means that which includes and is not limited to such things as bacterial growth, algae, remains of insects, remains of deceased animals, reptiles, rubbish, refuse, debris, papers, and any other foreign matter or material which because of its nature or location constitutes an unhealthy, unsafe or unsightly condition.

"Property owner" means an owner of record of a parcel of land identified on the last equalized assessment roll of the county or as otherwise known to a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer.

"Public right-of-way" means any area or parcel of property granted, deeded, dedicated to, or otherwise acquired by the City or the public at large for any public purpose including, but not limited to, alleys, roadways, parkways, pedestrian ways, sidewalks and public streets.

"Refuse" means any putrescible and nonputrescible solid waste, except sewage, whether combustible or noncombustible, and includes garbage and/or rubbish.

"Remedies" means the enforcement options available to the City to gain compliance with a law or regulation.

"Responsible person" means the owner of record of the subject real property and/or vehicle(s) and any occupant, lessee, or interested lienholder in same.

"Secured," as applied to a building, means that reasonable actions have been taken to prohibit unlawful entry into the building, including, at a minimum, the locking of windows and doors.

"Statute" means any law or regulation enacted by the California State Legislature.

"Stop work order" means the order issued by the Building Official or authorized agent as authorized by the Uniform Building Code requiring that construction cease due to apparent code violations.

“Temporary use permit” means the permit granted by a ministerial process wherein a specific use is approved and allowed for uses of a temporary nature that shall be subject to specific conditions in accordance with the municipal code or zoning code and applicable statutes, codes, rules and regulations.

“Tenant” or “occupant,” applied to a building or land, means and includes any person who lawfully occupies the whole or part of such building or land, whether alone or with others.

“Unoccupied,” applied to a building, dwelling or structure, means a building, dwelling or structure that is not occupied or otherwise utilized by any person with a legal right to hold possession or to exercise dominion or control over such building, dwelling or structure such that a reasonable person would believe that such building, dwelling or structure has not been lawfully occupied or utilized for an extended period of time.

“Vacant building” or “vacant structure” means any building, dwelling, or other structure: A) that is lacking habitual presence of persons who have a legal right to be on the premises or at which substantially all lawful business operations or residential occupancy has ceased; and B) whose doors, windows or other openings are broken or missing, so as to allow uncontrolled access to the interior or exposure to the elements.

### **Article III. General Provisions**

#### **16.18.300 Computation of time.**

The time in which any act provided by this chapter is to be done is computed by including the first and the last day. If the last day for the performance of any act set forth in this chapter is a holiday, then the time in which to perform the act is extended to and includes the next day which is not a holiday. If the last day for the performance of any act provided by this chapter is Saturday or Sunday, then the time in which to perform the act is extended to and including the next Monday.

#### **16.18.301 Recovery of costs pursuant to Code of Civil Procedure.**

Nothing in this chapter is intended to prohibit or preclude the City from seeking and recovering any costs pursuant to Sections 1032 through 1033.5 of the Code of Civil Procedure.

#### **16.18.302 Collection of debts by the City.**

The amount of any fine or fee imposed by this chapter shall be deemed a civil debt owing to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid

fine or fee, with any penalties applicable thereto as prescribed by this chapter or other enactment. The remedy prescribed by this section shall be cumulative, and the use of an action to collect such an amount as a debt by civil action shall not bar the use of any other remedy provided by this chapter or as otherwise provided by law.

**16.18.303 Confidentiality in connection with service requests.**

The City shall take all reasonable steps to ensure that the identity of any person making a service request to the City concerning a violation of the ordinance or other applicable laws shall remain confidential. However, no enforcement action shall be taken beyond issuance of a notice of violation unless: A) the complaining witness agrees to be identified upon request of the responsible party, or B) the Community Enhancement Manager, Chief of Police and any other enforcement officer has developed sufficient evidence to take further action.

**Article IV. Enforcement Authority**

**16.18.400 Concurrent enforcement authority with Police Department.**

The Community Enhancement Manager shall have concurrent enforcement authority with the Chief of Police regarding any violation of the municipal code resulting in a misdemeanor, an infraction or a public nuisance, unless otherwise provided by this chapter, the municipal code, applicable statutes, rules, codes and regulations, resolution of the City Council, or written agreement by and between the Community Enhancement Manager and the Chief of Police. Nothing in this chapter shall be construed or interpreted as providing the Community Enhancement Manager with the authority to enforce any provision or any statute that is specifically required to be enforced solely by the City's local law enforcement agency under the authority of the Chief of Police.

**16.18.401 Animal regulations.**

The Community Enhancement Manager shall have concurrent enforcement authority with the City's Animal Services Division regarding any violation of the municipal code pertaining to animals unless otherwise provided in the municipal code, any applicable statute, rule, code or regulation, resolution of the City Council, or written agreement by and between any independent contractor who may be employed to provide such animal control services to the City or any of its departments or divisions. The City Manager shall have the authority to delegate, in writing, exclusive enforcement authority to the City's Animal Services Division of this code and applicable statutes, rules, codes and regulations pertaining to animals; provided, that the authority delegated is within the



scope of services provided by any independent contractor who may be providing such animal control services to the City pursuant to an agreement with the City or any of its departments or divisions.

**16.18.402 Tobacco sales regulations.**

“Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia, without regard to the quantity sold, offered for sale, exchanged or offered for exchange. The Police Department shall have primary enforcement authority regarding any violation of the tobacco retailers ordinance, EGMC Chapter 4.27.

**16.18.403 Uniform Building Code violations.**

The Building Official or his or her designee as may be authorized by law shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Building Code as adopted pursuant to EGMC Chapter 16.04 unless such concurrent authority is prohibited by the Uniform Building Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.404 Uniform Administrative Code violations.**

The Building Official or his or her designee as may be authorized by law shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Administrative Code as adopted pursuant to EGMC Chapter 16.02 unless such concurrent authority is prohibited by the Uniform Administrative Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.405 Uniform Code for the Abatement of Dangerous Buildings violations.**

The Building Official or his or her designee as may be authorized by law shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Code for the Abatement of Dangerous Buildings as adopted pursuant to EGMC Chapter 16.22 unless such concurrent authority is prohibited by the Uniform Code for the Abatement of Dangerous Buildings or any other applicable statutes, codes, rules and/or regulations.

**16.18.406 Uniform Fire Code violations.**

The Fire Chief of the Cosumnes Community Services District Fire Department shall have exclusive enforcement authority regarding any violation of the Uniform Fire Code as adopted pursuant to EGMC Chapter 17.04 unless otherwise provided in writing by the Fire Chief pursuant to the Uniform Fire Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.407 California Fire Code violations.**

The Fire Chief of the Cosumnes Community Services District Fire Department shall have exclusive enforcement authority regarding any violation of the California Fire Code as adopted pursuant to EGMC Chapter 17.04 unless otherwise provided in writing by the Fire Chief pursuant to the California Fire Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.408 Uniform Plumbing Code violations.**

The Building Official or his or her designee shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Plumbing Code as adopted pursuant to EGMC Chapter 16.24 unless such concurrent authority is prohibited by the Uniform Plumbing Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.409 Uniform Mechanical Code violations.**

The Building Official or his or her designee shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Mechanical Code as adopted pursuant to EGMC Chapter 16.32 unless such concurrent authority is prohibited by the Uniform Mechanical Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.410 National Electrical Code.**

The Building Official or his or her designee shall have concurrent enforcement authority with any other City official regarding violations of the National Electrical Code as adopted pursuant to EGMC Chapter 16.28 unless such authority is prohibited by the National Electrical Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.411 Sign Code.**

The Community Enhancement Manager or his or her designee shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Sign Code unless such concurrent authority is prohibited by the Uniform Sign Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.412 Uniform Swimming Pool, Spa, and Hot Tub Code violations.**

The Building Official or his or her designee shall have concurrent enforcement authority with any other City official regarding violations of the Uniform Swimming Pool, Spa and Hot Tub Code as adopted pursuant to EGMC Chapter 16.36 with concurrent enforcement authority with the Sacramento County Environmental Management

Department unless such concurrent authority is prohibited by the Uniform Swimming Pool, Spa and Hot Tub Code or any other applicable statutes, codes, rules and/or regulations.

**16.18.413 Zoning regulations.**

The City Planning Director or his or her designee shall have concurrent enforcement authority with the Community Enhancement Division and/or any other City official regarding violations of the Zoning Code and regulations as adopted pursuant to the Zoning Code unless such concurrent authority is prohibited by any other applicable statutes, codes, rules and/or regulations.

**16.18.414 California Red Light Abatement Law.**

The Chief of Police or his or her designee shall have concurrent enforcement authority with any other City official regarding any violation of the California Red Light Abatement Law as set forth in Sections 11225 through 11235 of the California Penal Code unless such concurrent authority is prohibited by the Red Light Abatement Law.

**16.18.415 State Housing Law.**

The Building Division, the Cosumnes Community Services District Fire Department and the Community Enhancement Division shall have concurrent enforcement authority regarding the State Housing Law as prescribed in Sections 17910 through 17995 of the California Health and Safety Code.

**16.18.416 Weeds and rubbish.**

The Community Enhancement Manager or his or her designee shall have concurrent enforcement authority with any other City official regarding any violation of the municipal code, and/or any applicable statute, rule, code, or regulation relating to overgrown weeds or the accumulation of rubbish, refuse or dirt.

**16.18.417 Persons to retain exclusive authority.**

Nothing in this chapter shall limit or otherwise restrict any employee, agent or official of the City from exercising any exclusive authority to enforce any law or regulation as provided by any applicable statute, rule, code, regulation, or policy.

## **Article V. Inspection**

### **16.18.500 Authority to inspect.**

A Community Enhancement Inspector, Police Officer, or other authorized enforcement officer shall have the authority to enter upon any real property or premises to ascertain whether the provisions of the municipal code and/or applicable statutes, rules, codes and regulations are being obeyed and to make any examinations and surveys as may be necessary in the performance of his or her community enhancement duties. Inspections may include and/or involve the taking of photographs, samples, or other physical evidence and conferring with persons present.

### **16.18.501 Right to enter occupied property with consent of landlord, occupant or tenant.**

When it is necessary to conduct an inspection of occupied property to enforce the provisions of the municipal code and/or applicable statutes, rules, codes and regulations, or when a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer has reasonable cause to believe that there exists in an occupied building or upon occupied premises a condition that is contrary to or in violation of the municipal code and/or applicable statutes, rules, codes or regulations. The Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may enter the building or premises at reasonable times to inspect or to perform duties imposed by this chapter; provided, that if such building or premises are occupied, credentials are presented to the occupant or tenant and consent to enter for the purpose of inspection is requested and granted by the occupant or tenant, or the landlord consents to entry for inspection purposes.

### **16.18.502 Limitation on scope of consent by occupant or tenant.**

A Community Enhancement Inspector, Police Officer, or other authorized enforcement officer shall be permitted to inspect only those areas of the subject premises that are within the consenting occupant's or tenant's control or which are subject to the common authority of all occupants and tenants unless otherwise provided by a court-issued inspection warrant.

### **16.18.503 Limitation on scope of consent by landlord.**

A Community Enhancement Inspector, Police Officer, or other authorized enforcement officer shall be permitted to inspect only those areas of the subject premises that the consenting landlord has authority to access and inspect him or herself, unless otherwise provided by a court-issued inspection warrant.

**16.18.504 Right to enter secured unoccupied premises with consent.**

When it is necessary to conduct an inspection of secured unoccupied property to enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations and/or when the Community Enhancement Inspector, Police Officer, or other authorized enforcement officer has reasonable cause to believe that there exists in an unoccupied building or upon unoccupied premises a condition that is contrary to or in violation of the municipal code and/or applicable statutes, rules, codes or regulations, the Community Enhancement Inspector, Police Officer, or other authorized enforcement officer shall make a reasonable effort to locate the property owner or other person having charge or control of the building or premises and request and obtain that person's consent to enter for the purpose of inspection.

**16.18.505 Remedy for refused entry or inability to obtain consent.**

If a property owner, occupant or agent having charge or control of a property refuses to consent to an inspection of the subject premises by a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer and/or if the property owner or occupant, or agent having charge or control of a property, cannot be located after a reasonable attempt has been made, the Community Enhancement Inspector, Police Officer, or other authorized enforcement officer must obtain an administrative inspection warrant pursuant to the procedures provided in Section 1822.50 of the California Code of Civil Procedure to conduct an inspection of said premises, unless otherwise provided in this chapter or any other applicable law.

**16.18.506 Inspection of exterior violations from public property.**

To enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector or other authorized enforcement officer may inspect exterior code violations from a public street, sidewalk, park, or alley without the consent of the property owner or occupant and without an inspection warrant.

**16.18.507 Inspection of exterior violations from neighbor's yard.**

To enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect exterior code violations from a neighbor's yard without the consent of the property owner, occupant, or agent having charge or control of the premises upon which the violation exists and without an inspection warrant; provided, that lawful access to the neighbor's yard can be obtained.

#### **16.18.508 Inspection of abandoned buildings and property.**

To enforce the provisions of the municipal code, and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect abandoned buildings and property without the consent of the property owner or agent having charge or control of the premises and without an inspection warrant; provided, that the subject property and/or building or buildings are unoccupied and have not been secured against unlawful entry.

#### **16.18.509 Inspection of common areas of multihousing complexes.**

To enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect the common areas of multihousing complexes without the consent of the property owner, occupant or agent having charge or control of the premises and without an inspection warrant; provided, that such common areas are accessible to members of the general public.

#### **16.18.510 Inspection of open undeveloped areas.**

To enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect open undeveloped areas without the consent of the property owner or agent having charge or control of the premises and without an inspection warrant; provided, that the subject area is accessible to members of the general public and open to public view.

#### **16.18.511 Use of optical aids.**

Use of optical aids such as flashlights and binoculars may be used to conduct inspections of exterior code violations if such violations could otherwise be seen during normal daylight hours or at close range without such optical aids from a location the observing individual is legally justified to be located upon.

#### **16.18.512 Use of aerial surveillance.**

To enforce the provisions of the municipal code and/or applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may use aerial surveillance to inspect an enclosed yard that is visible from the air space above without the consent of the property owner, occupant or agent having charge or control of the premises and without an inspection warrant; provided, that such surveillance does not cause unnecessary noise, dust or threaten injury.

**16.18.513 Inspections of adult-related establishments.**

To enforce the provisions of EGMC Chapter 4.31 and/or other applicable statutes, rules, codes or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect an adult-related establishment.

**16.18.514 Inspections of tattooing establishments.**

To enforce the provisions of the municipal code and/or other applicable statutes, rules, codes or regulations, the Sacramento County Environmental Management Department or other authorized enforcement officer may inspect tattooing establishments pursuant to adoption of the municipal code.

**16.18.515 Inspections pertaining to storm water management and discharge.**

To enforce the provisions of the municipal code and/or other applicable statutes, rules or regulations, a public works inspector or other authorized enforcement officer may inspect and/or manage any discharges to the storm water drainage system in the City.

**16.18.516 Inspections pursuant to Uniform Building Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Building Code as adopted pursuant to EGMC Chapter 16.04.

**16.18.517 Inspections pursuant to Uniform Plumbing Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Plumbing Code as adopted pursuant to EGMC Chapter 16.24.

**16.18.518 Inspections pursuant to Uniform Mechanical Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Mechanical Code as adopted pursuant to EGMC Chapter 16.32.

**16.18.519 Inspections pursuant to National Electrical Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the National Electrical Code as adopted pursuant to EGMC Chapter 16.28.

**16.18.520 Inspections pursuant to the Uniform Code for the Abatement of Dangerous Buildings.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Code for the Abatement of Dangerous Buildings as adopted pursuant to EGMC Chapter 16.22.

**16.18.521 Inspections pursuant to the sign code.**

To enforce the provisions of the zoning code and/or municipal code and other applicable statutes, rules or regulations, a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may inspect any violation(s) pertaining to signs in the City.

**16.18.522 Inspections pursuant to Uniform Fire Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Fire Code as adopted pursuant to EGMC Chapter 17.04.

**16.18.523 Inspections pursuant to California Fire Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the California Fire Code as adopted pursuant to EGMC Chapter 17.04.

**16.18.524 Inspections pursuant to Uniform Swimming Pool, Spa, and Hot Tub Code.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to the Uniform Swimming Pool, Spa and Hot Tub Code as adopted pursuant to EGMC Chapter 16.36.

**16.18.525 Inspections pursuant to applicable statutes, rules, codes, regulations or inspection warrants.**

Nothing in this chapter shall prohibit or preclude inspections conducted pursuant to any applicable statute, rule, code, regulation or inspection warrant for purposes of inspections related to the respective statute, rule, code, regulation or inspection warrant.

**16.18.526 Refusal to permit inspection pursuant to court-issued inspection warrants.**

Any occupant or tenant who refuses to permit an inspection pursuant to any court-issued inspection warrant may be subject to arrest by the Community Enhancement Inspector, Police Officer, or other authorized enforcement officer. Forcible execution of said inspection under such circumstance shall be permitted only if the warrant expressly grants permission for such forcible entry.



## **Article VI. Notice of Violation**

### **16.18.600 Issuance of notice of violation.**

A Community Enhancement Inspector, Police Officer, or other authorized enforcement officer may issue a notice of violation in lieu of issuing a field citation, an administrative citation, a notice of public nuisance, or filing a criminal complaint as set forth in this chapter; provided, that grounds exist to issue a field citation, an administrative citation, a notice of public nuisance, or to file a criminal complaint. Nothing in this chapter shall be construed or interpreted to require the issuance of a notice of violation as a prerequisite to the issuance of a field citation, an administrative citation, a notice of public nuisance, or the filing of a criminal complaint.

### **16.18.610 Contents of notice of violation – Related to real property.**

If the violator is being charged for violations occurring upon real property, the notice of violation should include all of the following information:

- A. The name of the property's record owner, the occupant, if any, and/or the agent, if any, having charge or control of the property;
- B. The date of inspection;
- C. The date of the violation(s);
- D. The street address or a definite description of the location where the violation(s) occurred;
- E. The code section(s) violated;
- F. A description of the property's condition which violated the applicable codes;
- G. A list of violation(s) that must be corrected to bring the property into compliance;
- H. The deadline or specific date by which to correct the violation(s) listed in the notice of violation;
- I. A reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline;
- J. The amount of the potential fine for the code violation(s); and
- K. The name and signature of the Community Enhancement Inspector, Police Officer, or other authorized enforcement officer who issued the notice of violation ("citing officer").

**16.18.620 Contents of notice of violation – Unrelated to real property.**

If the violator is being charged for violations not occurring upon real property, the notice of violation shall include all of the following information:

- A. The name of the person(s) responsible for committing the violation(s);
- B. The date of the violation(s);
- C. The street address or a definite description of the location where the violation occurred;
- D. The code section(s) violated;
- E. A description of the violation(s);
- F. An order prohibiting the continuation or repeated occurrence of the described violation(s);
- G. The amount of the potential fine for the code violation(s); and
- H. The name and signature of the citing officer.

**16.18.630 Form of notice of violation.**

The notice of violation may be in letter form or any other form which adequately conveys the information set forth in EGMC Section 16.18.620.

**16.18.640 Persons entitled to service of notice of violation.**

The notice of violation, and any amended or supplemental notice of violation, should be served upon the person(s) responsible, responsible party, property owner, and/or person responsible for the violation(s).

**16.18.650 Service of notice of violation – Related to real property.**

A notice of violation that is related to real property may be served by personal delivery to the violator or, if the violator is the owner or occupant of, or has charge or control of the property, the notice may be served by causing a copy of said notice of violation to be sent by certified mail, postage prepaid, return receipt requested, to the address shown on the last available assessment roll. The failure of any such person to receive a copy of the notice of violation shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the notice of violation and retained by the citing officer.

**16.18.660 Service of notice of violation – Unrelated to real property.**

A notice of violation that is not related to the property may be served in any of the following ways:

A. By personal delivery to the violator;

B. If the violator is being charged for violations occurring at a business operating within the City, and the violator is the owner or an employee of the business, the notice of violation may be served by causing a copy of said notice to be sent by certified mail, postage prepaid, return receipt requested to the address shown on any permit or license issued by the City to said business; or

C. By causing a copy of said notice to be sent by certified mail, postage prepaid, return receipt requested, to an address otherwise known to the issuing inspector or authorized agent.

The failure of any such person to receive a copy of the notice of violation shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the notice of violation retained by the citing officer.

**16.18.670 Completion of service of notice of violation.**

Service of a notice of violation which is personally served shall be deemed completed at the time of such delivery. Service of a notice of violation which is served by mail is deemed completed on the date said notice of violation is deposited in the mail.

**16.18.680 Failure to comply with notice of violation.**

Failure to comply with a notice of violation may result in the issuance of a field citation, an administrative citation, or a notice of public nuisance, or such other action or proceeding pursuant to this chapter or permitted by law.

**Article VII. Administrative Citations**

**16.18.700 Issuance of administrative citations.**

Authorized enforcement officers may issue administrative citations to enforce the provisions of this chapter pursuant to the existing administrative citation procedure contained in EGMC Chapter 1.12.

## **Article VIII. Administrative Citation Appeals Procedures**

### **16.18.800 Appeals procedures.**

Persons who are issued an administrative citation for violations of this chapter may appeal the administrative citation pursuant to the appeals procedure set forth in EGMC Chapter 1.11.

## **Article IX. Infraction Violations**

### **16.18.900 Infraction violations.**

Any violation of the municipal code by a member of the public which is designated as an infraction violation under an applicable municipal code provision shall be deemed an infraction violation for purposes of this chapter.

### **16.18.910 Authority to arrest.**

Any Community Enhancement Inspector or other authorized agent who has a duty to enforce any provision of this chapter and who has reasonable cause to believe that a person has committed an infraction violation in the presence of said officer or agent may arrest the alleged violator without a warrant pursuant to Section 836.5 of the Penal Code.

### **16.18.920 Field citation – Release procedures – Evidence of identity.**

Any Community Enhancement Inspector, Police Officer, or other authorized enforcement officer who arrests a person for an infraction violation pursuant to EGMC Section 16.18.910 may, in lieu of taking the arrested person into custody, prepare, or cause to be prepared, in duplicate, an infraction field citation which shall provide a written notice to appear in court, and which shall contain the name and address of the arrested person, the offense charged, and the time when, and the place where, the arrested person shall appear in court. The arresting officer or agent shall release the arrested person and issue an infraction field citation; provided, that: (A) the arrested person presents his or her driver's license or other satisfactory evidence of his or her identity to the officer or agent; and (B) the arrested person signs a written promise to appear at court at a later date and time which shall be specified on the field citation. The arresting officer or agent shall deliver one (1) duplicate copy of the field citation to the arrested person and shall retain the original signed citation. If the arrested person does not have a driver's license or other satisfactory evidence of identity in his or her possession, the arresting officer or agent may require the arrested person to place a

right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the field citation.

**16.18.930 Custody.**

Any person who is placed under arrest in accordance with EGMC Section 16.18.910 who refuses to sign the field citation, or who is unable or unwilling to produce satisfactory identification, or is unable or unwilling to provide a thumbprint or fingerprint may be taken into custody by the arresting Community Enhancement Inspector, Police Officer, or other authorized enforcement officer pursuant to Section 853.5 of the Penal Code.

**16.18.940 Criminal infraction complaint.**

Whenever a Community Enhancement Inspector or other authorized agent has reasonable cause to believe that an infraction violation has been committed in the presence of the officer or agent and the alleged violator cannot be served with a field citation for any reason, the City Attorney may file a criminal infraction complaint against the alleged violator at the request of the Community Enhancement Manager or other enforcement authority.

**16.18.950 Continuing violations.**

A separate offense occurs for each day an infraction violation is continued and/or maintained.

**16.18.960 Infraction penalties.**

Infraction penalties may be provided by resolution of the City Council.

**16.18.970 Payment of civil fines.**

Upon conviction of any infraction violation, the convicted violator shall be required to pay all applicable civil fines in addition to the infraction penalties set forth in this chapter.

**16.18.980 Restitution.**

Nothing in this chapter is intended to prohibit or preclude the City from seeking and recovering restitution in any infraction violation proceeding.

**16.18.990 Attorneys' fees.**

The prevailing party in any infraction violation proceeding associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

## **Article X. Misdemeanor Violations**

### **16.18.1000 Misdemeanor violations.**

Any violation of the municipal code by a member of the public that is not exclusively deemed an infraction violation may be deemed a misdemeanor violation and may be prosecuted as such for purposes of this chapter.

### **16.18.1001 Fourth and subsequent infraction violations.**

The fourth (4<sup>th</sup>) and each subsequent violation of a municipal code provision by a member of the public that would otherwise be an infraction violation within a twelve (12) month period commencing upon the date of the first violation shall be deemed a misdemeanor violation.

### **16.18.1002 Continuing violations.**

A separate offense occurs for each day a misdemeanor violation is continued and/or maintained.

### **16.18.1003 Discretion of the City Attorney.**

The City Attorney shall have the discretion to reduce any misdemeanor violation to an infraction violation.

### **16.18.1004 Authority to arrest without warrant.**

Any Community Enhancement Inspector, Police Officer or other authorized enforcement officer who has a duty to enforce any provision of this chapter and who has reasonable cause to believe that a person has committed a misdemeanor violation in the presence of said officer or agent may arrest the alleged violator without a warrant pursuant to Section 836.5 of the Penal Code.

### **16.18.1005 Field citation – Release procedure – Evidence of identity.**

Any Community Enhancement Inspector, Police Officer or other authorized enforcement officer who arrests a person for a misdemeanor violation pursuant to EGMC Section 16.18.1004 may, in lieu of taking the arrested person into custody, prepare, or cause to be prepared, in duplicate, a field citation which shall provide a written notice to appear in court, and which shall contain the name and address of the arrested person, the offense charged, and the time when, and the place where, the arrested person shall appear in court. The arresting officer or agent may release the arrested person and issue a misdemeanor field citation; provided, that: (A) the arrested person presents his or her

driver's license or other satisfactory evidence of his or her identity to the officer or agent; and (B) the arrested person signs a written promise to appear at court at a later date and time which shall be specified on the field citation. The arresting officer or agent will deliver one (1) duplicate copy of the field citation to the arrested person and retain the original signed citation. If the arrested person does not have a driver's license or other satisfactory evidence of identity in his or her possession, the arresting officer or agent may require the arrested person to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the field citation.

#### **16.18.1006 Custody.**

Any person who is placed under arrest in accordance with EGMC Section 16.18.1004 who refuses to sign the field citation, or who is unable or unwilling to produce satisfactory identification, or is unable or unwilling to provide a thumbprint or fingerprint may be taken into custody by the arresting Community Enhancement Inspector, Police Officer, or other authorized enforcement officer pursuant to Section 853.6 of the Penal Code.

#### **16.18.1007 Criminal misdemeanor complaint.**

Whenever a Community Enhancement Inspector or authorized agent has reasonable cause to believe that a misdemeanor violation is being committed and the alleged violator cannot be served with a field citation for any reason, the City Attorney may file a criminal misdemeanor complaint against the alleged violator at the request of the Community Enhancement Manager or any other enforcement authority. The City Attorney may, in his or her discretion, reduce any misdemeanor violation to an infraction violation.

#### **16.18.1008 Notice of pending action.**

Upon the filing of a criminal complaint for zoning or other land use related violations, the Community Enhancement Manager or his or her designee, or any other authorized enforcement authority, may file a certificate of nuisance in the Sacramento County Clerk-Recorder's office to prevent the owner from transferring the subject property or premises to another person or entity without first correcting the outstanding violation and reimbursing the City for any and all costs incurred by the City in its attempt to remedy the violation. Once the action is completed and the City is reimbursed for any costs incurred by the City in its attempt to remedy the subject violation, the Community Enhancement Manager, or his or her designee, shall file a certificate of abatement with the Sacramento County Clerk-Recorder's office.

**16.18.1009 Misdemeanor penalties.**

Every municipal code violation determined to be a misdemeanor violation which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

**16.18.1010 Payment of civil penalties.**

Upon conviction of any misdemeanor violation, the convicted violator shall be required to pay all applicable civil fines in addition to any misdemeanor penalties set forth in EGMC Section 16.18.1009.

**16.18.1011 Restitution.**

Nothing in this chapter is intended to prohibit or preclude the City from seeking and recovering restitution in any misdemeanor violation proceeding.

**16.18.1012 Community service.**

Pursuant to Section 36904 of the California Government Code, persons imprisoned for a misdemeanor violation under this chapter may be required to labor on public property or public works projects within the City.

**16.18.1013 Attorneys' fees.**

The prevailing party in any misdemeanor violation proceeding associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

**Article XI. Public Nuisances**

**16.18.1100 Abandoned and/or vacant buildings or structures.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to abandon or permanently vacate, or cause to be abandoned or permanently vacated, any building or structure, so that it becomes accessible to unauthorized persons including, but not limited to, juveniles and vagrants, for unlawful or hazardous use, or to allow the same to become infested with vermin or rodents, or to become a menace to the health or safety of the public.

The following requirements must be completed to secure an abandoned and/or vacant building or structure:



A. Duty to Maintain Property. It is unlawful for an owner to maintain property or to permit property to be maintained in such a manner that any one (1) or more of the conditions described in the following subsections are found to exist:

1. Any vacant structure that is open and accessible and/or not secured by boarding in compliance with subsection (B) of this section;
2. Any vacant structure whose interior contains any waste, rubbish, debris or graffiti;
3. Any vacant structure whose premises contain any waste, rubbish, debris, excessive vegetation or graffiti;
4. Any vacant structure whose doors, windows or other openings are secured by boarding in compliance with subsection (B) of this section or by any other method permitted by subsection (B) of this section at any time at which there is no current and valid boarding permit as required by subsection (C) of this section;
5. Any vacant structure that promotes a criminal activity on the property, to include but not limited to use and sale of controlled substances, prostitution and criminal gang activity.

B. Standards of Securing. Except as provided in subsection (B)(12) of this section, the owner shall secure a vacant structure according to all of the following specifications and requirements:

1. Remove all waste, rubbish or debris from the interior of the structure;
2. Remove all waste, rubbish, debris or excessive vegetation from the premises surrounding the vacant structure;
3. Barricade all unsecured doorways, windows, or exterior openings with minimum one-half (0.5") inch thickness exterior grade plywood which shall extend to the molding stops or studs;
4. Mount at least two (2) wood stocks of minimum two by four (2" x 4") inch thickness to the reverse face of the plywood with minimum three-eighths (0.375") inch carriage bolts mated with nuts and two flat washers;
5. Extend the stock a minimum of eight (8") inches on each side of the interior wall;
6. Cause all hardware to be galvanized or cadmium plated;
7. Paint all exterior barricade material the predominant color of the structure;
8. Terminate all utility service to the dwelling or building by removal of the meters and termination of electric power at the pole. Compliance with this subsection may be

waived in writing by the Building Official as to the electric utility service if electricity is needed to power exterior security lighting, an alarm system, or equipment to be used in connection with rehabilitation of the dwelling or building for which there is an active and current building permit;

9. If applicable, cap the sewer in a manner approved by the Building Official to prevent the accumulation of methane gas in the dwelling or building;

10. Post the Premises. One or more metal signs must be posted at or near each entrance to the structure and on fences or walls as appropriate. The signs must remain posted until the structure is either lawfully occupied or demolished. Signs must contain the following information:

**DO NOT ENTER.** It is illegal to enter or occupy this building or premises or to remove or deface this notice. Trespassers will be prosecuted. (Municipal Code, California Penal Code).

11. The Building Official may require the owner to erect a fence that meets the specifications of the Building Inspection Department on the property where the vacant structure is located. Any fence erected in accordance with this section shall be maintained in a safe condition without tears, breaks, rust, or dangerous protuberances;

12. In lieu of requiring the owner to board a vacant structure as set forth in subsection (B)(1) through (11) of this section, the Building Official may allow the owner to board the vacant structure in a manner that the Building Official determines adequately prevents unauthorized entry or vandalism. In any event, an owner shall post the premises as set forth in this section.

### C. Permit Required for Securing an Abandoned or Vacant Dwelling or Building.

1. No owner of a vacant structure shall install, place or maintain boards over the doors, windows or other openings of any vacant structure or otherwise secure such openings by a means other than the conventional method used in the original construction and design of the dwelling or building without having first applied for and received a boarding permit from the Building Official.

2. An owner of a vacant structure must apply to the Building Official for a boarding permit within thirty (30) days after the structure becomes vacant.

3. The application for a boarding permit shall include all of the following information:

a. The expected period of vacancy;

b. A plan for regular maintenance during the period of vacancy;

c. A plan and timeline for the lawful occupancy, rehabilitation or demolition of the vacant structure, or alternatively, a plan and timeline for sale of the property to another person or entity with provision in the sale for the lawful occupancy, rehabilitation or demolition of the structure.

4. The Building Official will issue a boarding permit required by subsection (C)(1) of this section upon the submission of a complete and accurate boarding permit application by the owner of the structure and upon payment of the required fee.

5. The owner of a vacant structure must board or otherwise secure the vacant structure in compliance with subsections (A) and (B) of this section within ten (10) days of receiving a boarding permit. The Building Official will confirm through inspection that the boarding or other method of securing the structure has been completed in compliance with subsections (A) and (B) of this section.

6. The boarding permit issued pursuant to this section shall authorize the boarding or other securing of a structure for a period of no greater than six (6) months from the date of issuance.

7. The boarding permit may be renewed after the initial period for up to an additional six (6) months, upon the submission of a written application by the owner of the structure. The submission of the application must occur no later than ten (10) business days before the original permit expires, upon the payment of the required fee and upon the confirmation through inspection by the Building Official that the boarding or other method of securing the structure has been completed in accordance with subsections (A) and (B) of this section. The application shall include the information required by subsection (C)(3) of this section.

8. A boarding permit may not be extended beyond the renewal period nor may a new application for the same structure be accepted by the Building Official within one (1) year of the expiration date of the prior permit, unless all of the following occur:

a. The owner of the structure submits a written application for extension that includes the information required by subsection (C)(3) of this section;

b. The owner of the structure pays the required fee;

c. The Building Official confirms through inspection that the boarding or other method of securing the structure has been done in compliance with subsections (A) and (B) of this section;

d. Good cause for the renewal exists. "Good cause" shall require a showing by the owner that the permit renewal is made necessary by conditions or events beyond the owner's control, such as inability to obtain financing for repair or rehabilitation, inability

to locate a suitable buyer, unanticipated delays in construction or rehabilitation, or unanticipated damage to the property. In addition, where appropriate, "good cause" shall also require a showing by the owner that he or she has exercised reasonable and due diligence in attempting to complete the needed repair, rehabilitation or correction or in attempting to sell the property. If the Building Official determines that good cause exists to renew the permit and that all other conditions are met, the permit may be renewed by the Building Official for a period of up to, but not more than, an additional six (6) months, subject to all of the same conditions imposed on the original renewal permit.

#### **16.18.1101 Animals.**

It is unlawful and it shall be a public nuisance for any person to: (A) keep on any premises or property within the City any animal which by any sound, cry or behavior causes a repeated annoyance or discomfort to a reasonable person of normal sensitivity or any animal in unsanitary conditions; (B) keep on any premises or property within the City more animals than permitted under this code or any applicable state or federal law; or (C) keep on any premises or property within the City any animal deemed to be illegal under this code or any applicable state or federal laws.

#### **16.18.1102 Attractive nuisances.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain on any such premises or property any condition that constitutes an attractive nuisance including, but not limited to, the following: (A) abandoned, damaged or broken equipment, vehicles, machinery or household items, (B) unprotected hazardous, filled pools without required fencing or unfilled pools or ponds; and (C) unfenced or otherwise unprotected wells or excavations.

#### **16.18.1103 California Civil Code.**

The City may declare that a public nuisance exists whenever any member of the public creates, causes, commits, permits or maintains any condition or performs or causes to be performed any activity that falls within the scope of the definition of "public nuisance" as set forth in Sections 3479 and 3480 of the California Civil Code.

#### **16.18.1104 California Drug Abatement Act.**

The City may: (A) declare that a public nuisance exists whenever any member of the public creates, causes, commits, permits or maintains any condition or performs or causes to be performed any activity that falls within the scope of the definition of "public nuisance" as set forth in Section 11570 of the California Health and Safety Code; and

(B) commence any action or proceeding pursuant to the California Drug Abatement Act to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.

**16.18.1105 California Red Light Abatement Act.**

The City may: (A) declare that a public nuisance exists whenever any member of the public creates, causes, commits, permits or maintains any condition or performs or causes to be performed any activity that falls within the scope of the definition of “public nuisance” as set forth in Section 11225 of the California Penal Code; and (B) commence any action or proceeding pursuant to the California Red Light Abatement Act to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.

**16.18.1106 Code violations of applicable law.**

It shall be deemed a public nuisance for any member of the public to create, cause, commit, permit or maintain any condition or to perform or cause to be performed any activity specifically identified as a public nuisance by this code and/or applicable statute, rule, code or regulation.

**16.18.1107 Discharge of sewage.**

It is unlawful and it shall be a public nuisance for any person to permit on any premises or property within the City any matter or substance from a private vault, cesspool, septic tank, water closet, privy vault, urinal, pipe, sewer line or any sewage, effluent, slop water, polluted water or any other filthy water, matter or substance to flow or discharge upon the ground or upon any public sidewalk, street or other public place.

**16.18.1108 Disruptive activities.**

It is unlawful and it shall be a public nuisance for any person to operate or maintain any premises or property within the City in a manner that has resulted in repeated disruptive activities including, but not limited to, disturbances of the peace and quiet of the neighborhood which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, public drunkenness, drinking in public, harassment of passersby, sale of stolen goods, public urination, theft, assaults, battery, acts of vandalism, excessive littering, illegal parking, loud noises, traffic violations, curfew violations, or police detentions and arrests.

**16.18.1109 Fire hazard.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in such a manner that has resulted in the accumulation of dry or dead plant matter, combustible refuse and waste or any other matter which by reason of its size, manner of growth and location, constitutes a fire hazard to any building, improvement, crop or other property.

**16.18.1110 Hazardous substances or wastes.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to permit any hazardous substances which, because of their quantity, concentration or physical, chemical or infectious characteristics may either cause or substantially contribute to an increase in mortality or serious illness or pose a significant present or potential hazard to human health or the environment if improperly managed, or if hazardous waste to be unlawfully released, discharged, placed or deposited upon any premises or onto any City property.

**16.18.1111 Illegal nonconforming buildings or structures.**

It is unlawful and it shall be declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property any building or structure, or any part thereof, which has been constructed or is maintained in violation of any applicable state or local law or regulation relating to the condition, use or maintenance of such building or structure.

**16.18.1112 Gang activities.**

It is unlawful and shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to have any unlawful activities of a criminal gang, as defined in Sections 186.22, 186.22a, and 186.25 of the Penal Code, and Section 11570 of the Health and Safety Code.

**16.18.1113 Garbage cans.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property with garbage or trash containers stored in the public right-of-way, except on scheduled waste collection days.

#### **16.18.1114 Graffiti.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in such a manner that has any inscription, word, figure, picture, design or other graphic representation prohibited by law or unauthorized by the owner or person in possession of the subject property, which is marked, etched, scratched, drawn, painted or otherwise applied on any building or other public or private facility, and can be seen by any person using any public right-of-way. "Graffiti" includes, but is not limited to: (A) any authored inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property; (B) representations of any gang-type group; (C) projection of threats; (D) insults to any race, creed or religion; or (E) expressions of profanity.

#### **16.18.1115 Landscaping.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain any front and visible side yards without acceptable landscaping, except for improved surfaces such as walks and driveways. Acceptable landscaping shall include any ground cover, decorative rock, redwood bark, lawn and/or other material as determined to be acceptable or required by the Community Enhancement Manager or his or her designee. For single-family and two-family residential zoning districts, a minimum of twenty-five (25%) percent of the net lot area and forty (40%) percent of the front yard area shall comprise a pervious surface.

#### **16.18.1116 Maintenance, repair, restoration, or dismantling vehicle or large equipment or machinery.**

It is unlawful and it shall be declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to allow or perform on such premises or property the maintenance, repair, restoration or dismantling of any vehicle, large machinery, or large equipment upon any residential property, walkway, or easement visible from a public street or sidewalk or from an adjoining property. This prohibition shall not apply to work which is specifically authorized by state or local law or regulation and shall not apply to minor repair and maintenance of vehicles as defined in the Zoning Code, machinery or equipment which belong to the person residing at the property, and which is either performed inside an enclosed structure such as a garage or performed outside but is not visible for longer than twenty-four (24) consecutive hours.

**16.18.1117 Mosquito breeding places.**

It is unlawful and it shall be a public nuisance for any person to maintain any premises or property within the City upon which there is stagnant or still water or a marshy condition which harbors and breeds mosquitoes or other poisonous or objectionable insects.

**16.18.1118 Nuisance vehicles.**

A. Any vehicle used to solicit an act of prostitution or to acquire or attempt to acquire any controlled substance is declared to be a nuisance, and the vehicle may be enjoined and abated as provided in this chapter.

B. Any person or his or her servant, agent or employee who owns, leases, conducts or maintains any vehicle used for any of the purposes or acts set forth in this section is guilty of creating a public nuisance.

**16.18.1119 Occupied vehicles.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to permit on such premises or property any parked operable vehicle, recreational vehicle, motor home, trailer, camper, camper shell and boat to be used for a residential occupancy except on property zoned for mobile home parks or camping.

**16.18.1120 Portable recreational and sporting equipment.**

It is unlawful and it shall be a public nuisance for any person to erect a portable basketball hoop, skateboard ramp, tetherball pole, or other portable recreational or sporting equipment on a public right-of-way, street, easement, sidewalk or roadway.

**16.18.1121 Parking lot striping and handicapped markings.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to fail to maintain in good condition any parking lot striping and handicapped markings on such premises or property.

**16.18.1122 Public burning.**

It is unlawful and it shall be a public nuisance for any person to engage in the intentional burning of any material, structure, matter or thing on any premises or property within the City without a validly issued permit that allows such burning.



#### **16.18.1123 Rubbish, refuse and dirt.**

The City Council may: (A) declare by resolution pursuant to Section 39561 et seq. of the California Government Code that a public nuisance exists with respect to a specific parcel whenever that parcel is being maintained in a manner that has resulted in an accumulation of rubbish, refuse and dirt upon parkways, sidewalks or private property in the City; and (B) commence any action or proceeding pursuant to Section 39561 et seq. of the California Government Code to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.

#### **16.18.1124 Safety hazards.**

It is unlawful and it shall be a public nuisance for any person to maintain any premises or property within the City in a manner that presents an imminent safety hazard and/or which creates a present and immediate danger to life, property, health or public safety, including, but not limited to, clandestine drug labs, fire-damaged, and vacant open and accessible structures.

#### **16.18.1125 Sewage.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to fail to properly connect any inhabited improvements on such premises or property to a sewage disposal system or sanitary sewer and/or to permit sewage seepage.

#### **16.18.1126 State Housing Law.**

The City may: (A) declare that a public nuisance exists whenever any member of the public creates, causes, commits, permits or maintains any condition or performs or causes to be performed any activity that falls within the scope of the definition of "public nuisance" as set forth in Sections 17910 through 17995.5 of the California Health and Safety Code; and (B) commence any action or proceeding set forth therein to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.

#### **16.18.1127 Storage bins or cargo/shipping containers.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property the exterior storage or maintenance in a residential, agricultural residential, or agricultural zone of storage bins or cargo/shipping containers without a temporary use permit, excepting that such bins or containers may be located on site for a maximum of twenty-four (24) hours as part of the active loading and

unloading of the container without a temporary use permit. Any such bins or containers shall be located a minimum of ten (10' 0") feet from any front or side-street property line, a minimum of five (5' 0") feet from any other structure or container. At no time shall the container obstruct the clear vision triangle as required by the Zoning Code. For residential uses, containers may not be placed within the required front or side yard area.

**16.18.1128 Swimming pools, ponds or other bodies of water.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain upon any such premises or property any swimming pool, pond, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained resulting in the water becoming polluted and/or providing for mosquito breeding.

**16.18.1129 Termites, insects, vermin and rodents.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in a manner that results in creating a habitat for termites, insects, vermin or rodents that presents a threat to the health and safety of the public and/or a threat to property and adjacent properties.

**16.18.1130 Trees and shrubs.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in such a manner that has resulted in: (A) trees and shrubs with dead or fallen limbs or branches that present a safety hazard or restrict, impede or obstruct the use of a public right-of-way, easement, sidewalk or roadway; or (B) branches from any tree or shrub not trimmed to the height of seven (7' 0") feet over the public sidewalk and to the height of 14 (14' 0") feet over the public street, easement, sidewalk or roadway where such growth restricts, impedes or obstructs pedestrian or vehicular use of said public right-of-way, easement, sidewalk or roadway.

**16.18.1131 Vehicle parking.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to permit on such premises or property any operable vehicle, recreational vehicle, motor home, trailer, camper, camper shell or boat to be parked or stored outside of a garage or carport on an unimproved surface.

### **16.18.1132 Visibility hazards.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises, vehicle or property in the City to maintain such premises, vehicle or property in such a manner as to cause a hazard to the public by obscuring the visibility of any public right-of-way, road intersection or pedestrian walkway.

### **16.18.1133 Visual blight.**

It is unlawful and it shall be declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain any such premises or property or improvement thereon in such a manner as to cause or to allow the premises, property or improvement to become defective, unsightly, or in such other condition of deterioration or disrepair as the same may cause substantial depreciation of the property values or similar detriment to surrounding properties, as well as an adverse effect on the health, safety, and welfare of the citizens of the City. Visual blight conditions include, but are not limited to, any of the following conditions:

A. The presence of any improvement (including, but not limited to, buildings, garages, carports, wooden fences, block walls, roofs or gutters) in which the condition of the patio, stucco, siding or other exterior coating has become so deteriorated as to permit decay, excessive checking, cracking or warping so as to render the improvement or property unsightly and in a state of disrepair;

B. The presence of any improvement with cracked or broken windows, roofs in disrepair, damaged porches or broken steps;

C. The presence of any improvement which is abandoned, boarded up, partially destroyed or left in a state of partial construction or repair for more than ninety (90) days;

D. The presence of abandoned, damaged or broken equipment, vehicles or machinery which is visible from a public street or sidewalk or from an adjoining property; or

E. The presence of excessive junk, refuse and garbage which is visible from a public street or sidewalk or from an adjoining property.

### **16.18.1134 Weeds.**

It is unlawful and it shall be a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or property in the City to maintain such premises or property in a manner that has resulted in weeds at a height of over twelve

(12") inches which when mature bear wingy or downy seeds, which will attain such a large growth as to become a fire hazard when dry, or which are otherwise noxious or dangerous to be present on any front and visible side yards.

**16.18.1135 Weed abatement.**

The City Council may: (A) declare by resolution pursuant to Section 39561 et seq. of the California Government Code that a public nuisance exists with respect to a specific parcel whenever that parcel is being maintained in a manner that has resulted in weeds, as that term is defined in Section 39561.5 of the California Government Code, being grown upon the streets, sidewalks or private property in the City; and (B) commence any action or proceeding pursuant to Section 39561 et seq. of the California Government Code to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.

**Article XII. Notice of Public Nuisance and Order to Abate**

**16.18.1200 Notice of public nuisance and order to abate.**

When a Community Enhancement Inspector, Police Officer or other enforcement officer has inspected any real property or premises and has found and determined that conditions at or upon such property or premises constitute a public nuisance pursuant to any provision of the municipal code and/or applicable statute, rule, code and regulation, and the City has not commenced an alternative public nuisance abatement procedure prescribed by statute regarding said public nuisance, the Community Enhancement Inspector, Police Officer or enforcement officer may issue or cause the issuance of a notice of public nuisance and order to abate ("notice and order").

**16.18.1201 Public nuisance administrative fines.**

Administrative fines are set forth in the schedule of fines adopted by resolution of the City Council.

**16.18.1202 Contents of notice and order.**

The notice and order shall include all of the following information:

- A. The name of the property's record owner, the occupant, if any, and/or the agent, if any, having charge or control of the property;
- B. The date of inspection;

- C. The date of the violation;
- D. The street address or a definite description of the location where the violation occurred;
- E. The code section(s) violated;
- F. A description of the property's condition which violated the applicable codes;
- G. The actions necessary to correct the subject violations;
- H. The deadline or specific date by which to correct the violations;
- I. A reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline;
- J. The number of times the violation has been cited by the City within the previous thirty-six (36) months;
- K. The amount of any public nuisance administrative fine for the code violation;
- L. A description of the fine payment process, including a description of the time within which the fine must be paid and the place where the fine must be paid;
- M. A description of the process by which the City may collect any unpaid fines;
- N. An order prohibiting the continuation or repeated occurrence of the code violation described in the notice and order;
- O. A description of the administrative appeal process for a person's appeal of the Community Enhancement Inspector's determination of violation, including the time within which the administrative appeal must be filed and the place from which a "request for hearing" form may be obtained; and
- P. The name and signature of the citing Community Enhancement Inspector or other authorized agent.

**16.18.1203 Form of notice and order.**

The heading of the notice shall be "notice and order."

**16.18.1204 Posting of notice and order.**

The notice and order, and any amended or supplemental notice and order, shall be posted on the property on which a violation occurs.

**16.18.1205 Method of service.**

Service of a copy of the notice and order shall be made upon such persons that are entitled thereto either personally or by certified mail, postage prepaid, return receipt requested, at their address as it appears on the last equalized assessment roll of the county or as otherwise known to the issuing Community Enhancement Inspector or Enforcement Officer. If an address of any such person does not appear on the last equalized assessment roll or is not otherwise known to the issuing Inspector or Enforcement Officer then a copy of the notice and order shall be addressed to such person(s) and mailed to the address of the subject premises. The failure of any such person to receive a copy of the notice and order shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the notice and order and retained by the Inspector or Enforcement Officer.

**16.18.1206 Proof of service.**

Proof of service of the notice and order shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to a copy of the notice and order and retained by the Community Enhancement Inspector or Enforcement Officer.

**16.18.1207 Appeal of notice and order.**

Any party possessing a legal or equitable interest including but not limited to a leasehold interest in the property that is the subject of a notice and order may appeal the notice and order.

**16.18.1208 Form for filing of appeal.**

All appeals from any notice and order shall be in writing and shall contain the following information:

- A. Name(s) of each appellant;
- B. A brief statement setting forth the legal or equitable interest of each appellant;
- C. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
- D. A brief statement in ordinary and concise language of the relief sought and the reasons why the notice and order should be reversed, modified or otherwise set aside;

E. The signature of all parties named as appellants and their official mailing addresses. Any appeal form that fails to provide all of the information required by this section shall be deemed incomplete.

**16.18.1209 Time in which to file appeal.**

A complete and proper appeal of notice and order as described in EGMC Section 16.18.1207 shall be filed with the City Clerk within ten (10) business days from the date service of the notice and order is completed pursuant to EGMC Sections 16.18.1205 and 16.18.1206. Any appeal not timely filed shall be rejected.

**16.18.1210 Processing appeal selection and compensation of Administrative Appeals Officer.**

The City Clerk or his or her designee shall present any appeal filed pursuant to this chapter to the City Manager or his or her designee who shall appoint an Administrative Appeals Officer to adjudicate the appeal. The employment, performance, evaluation, compensation and/or benefits of the Administrative Appeals Officer shall not be directly or indirectly conditioned upon any particular rulings issued.

**16.18.1211 Stay pending appeal.**

Enforcement of any notice and order shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this chapter.

**16.18.1212 Failure to file appeal.**

Failure to timely and properly file an appeal from a notice and order shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of the notice and order or any portion thereof. The determination that the violation occurred and that the violator was responsible for the violation shall be deemed final on the date that service of the notice and order is deemed completed pursuant to EGMC Sections 16.18.1205 and 16.18.1206.

**16.18.1213 Recordation of certificate of nuisance.**

After a notice and order becomes final upon failure to file a timely appeal, or upon service of an administrative appeal decision as set forth in EGMC Section 1.11.130, the City Clerk, or his or her designee, may file a certificate of nuisance in the office of the Sacramento County Clerk-Recorder to certify that: (A) the subject property is being maintained in violation of the municipal code and/or applicable statute, rule, code and regulation; and (B) the property owner has been so notified.

**16.18.1214 Recordation of certificate of abatement.**

Whenever it is determined by the Community Enhancement Manager, Chief of Police, or other enforcement officer that the corrections ordered by the certificate of nuisance have been completed so that the premises no longer exists in a condition that is in violation of the municipal code and/or applicable statute, rule, or code, and all outstanding fees/fines have been paid, a certificate of abatement may be recorded in the office of the Sacramento County Clerk-Recorder certifying that all required corrections have been made and that the subject premises is no longer being maintained as a public nuisance.

**16.18.1215 Demand for payment of public nuisance administrative fines after failure to comply with order to abate.**

After a notice and order becomes final upon the failure to file a timely and proper appeal or upon service of an administrative appeal decision pursuant to EGMC Section 1.11.130, the Community Enhancement Manager, Chief of Police or other enforcement officer shall prepare a demand for payment of all applicable public nuisance administrative fines if the City determines that the person to whom the order to abate is directed failed, neglected or refused to obey any orders or adhere to the terms and conditions set forth in said order.

**16.18.1216 Contents of demand for payment.**

The demand for payment shall include all of the following, which shall be consistent with the information contained in the final notice and order:

- A. The name of the responsible person(s) for payment of the public nuisance administrative fines;
- B. The street address or a definite description of the location where the violation occurred;
- C. The deadline or specific date by which the violations were to have been corrected;
- D. The date of the follow-up inspection where continuing violation conditions were discovered;
- E. The code violation(s) noted at the follow-up inspection;
- F. The amount of the public nuisance administrative fine which shall be immediately due and payable;
- G. The place where the fine must be paid; and



H. A description of the process by which the City may collect any unpaid fines.

**16.18.1217 Form of demand for payment.**

The demand for payment may be in letter form or any other form which conveys the information set forth in EGMC Section 16.18.1216.

**16.18.1218 Service of demand of payment.**

The demand for payment shall be served upon the responsible person(s) for payment of the public nuisance administrative fines either personally or by certified mail, postage prepaid, return receipt requested, at their address as it appears on the last equalized assessment roll of the county or as otherwise known to the issuing Community Enhancement Inspector or other enforcement officer. If an address of any such person does not appear on the last equalized assessment roll or is not otherwise known to the issuing inspector or authorized agent, then a copy of the notice and order shall be addressed to such person(s) and mailed to the address of the subject premises. The failure of any such person to receive a copy of the demand for payment shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the demand for payment and retained by the Community Enhancement Inspector or other enforcement officer.

**16.18.1219 Completion of service.**

Service of the demand for payment which is personally served shall be deemed completed at the time of such delivery. Service of a notice of public nuisance which is served by mail is deemed completed on the date said notice of public nuisance is deposited in the mail.

**16.18.1220 Proof of service.**

Proof of service of the demand for payment shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to a copy of demand for payment and retained by the Community Enhancement Inspector or other enforcement officer.

**16.18.1221 Attorneys' fee.**

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

## **Article XIII. Public Nuisance Appeals Procedures**

### **16.18.1300 Appeals procedures.**

Such persons who seek to appeal a notice and order issued pursuant to Article XII of this chapter shall utilize the administrative appeals procedure set forth in EGMC Chapter 1.11.

### **16.18.1310 Office conference – Informal meeting.**

A. In lieu of filing an administrative appeal of the notice and order as provided in this chapter, the recipient(s) of said notice and order may, within twenty-four (24) hours of the issuance date stated on the notice and order, contact the City at the number provided on the notice and order to schedule a meeting with City staff for a department-level resolution of the alleged violation(s). The meeting must be held within seven days of the date of issuance noted on the notice and order, and must be held between the hours of 8:00 a.m. and 5:00 p.m. at the City of Elk Grove City Hall. The City will provide staff available or one meeting for this purpose within the seven-day time period.

B. At the conclusion of the meeting, the City may issue an extension of time to cure the violation only if the extension contains an agreement, signed by an authorized City representative and recipient(s), stating the following:

1. The specific means, schedule and completion dates for each step of the abatement process for each violation;
2. The date(s) for City re-inspection to confirm abatement of each violation to the City's satisfaction;
3. The fees that shall accrue upon failure to meet each of those new deadlines; and
4. A statement that the notice and order recipient(s) acknowledges forfeiture of the right to appeal the underlying notice and order and does not contest the alleged violations. The signed extension to the notice and order shall contain all information set forth on an administrative citation as required under EGMC Section 1.12.050.

C. The notice and order recipient(s) may reschedule the meeting once. Upon the second absence, the original notice and order deadline shall again be effective, and compliance is required.

D. If the notice and order recipient(s) does not comply with the terms of the extension, the City may enforce compliance by using applicable criminal and civil remedies provided in any applicable law.

#### **16.18.1320 Recordation of certificate of nuisance.**

Following an administrative appeal decision issued by the Appeals Hearing Officer pursuant to EGMC Chapter 1.11, a certificate of nuisance may be filed and recorded in the office of the Sacramento County Clerk-Recorder to certify that: (A) the subject property is being maintained as a public nuisance in violation of the municipal code and/or applicable statute, rule, code and regulation and (B) the property owner has been so notified.

#### **16.18.1330 Recordation of certificate of abatement.**

Whenever it is determined that the violations set forth in the certificate of nuisance have been corrected so that the premises no longer exists in a condition that is a public nuisance in violation of the municipal code and/or applicable statute, rule, code and regulation, a certificate of abatement may be recorded in the office of the Sacramento County Clerk-Recorder certifying that all required corrections have been made and that the subject premises is no longer being maintained as a public nuisance.

### **Article XIV. Summary Abatement of Public Nuisance Procedures**

#### **16.18.1400 Summary abatement of public nuisances that pose an immediate threat to public health and safety.**

If, upon the determination of a Community Enhancement Inspector, Police Officer, or other authorized enforcement officer, a particular public nuisance as described in this chapter or any other applicable statute, rule, code or regulation poses an immediate threat to public health and safety, the authorized enforcement officer who made the public nuisance determination may dispense with the notice and hearing requirements of the public nuisance appeals procedures set forth in this chapter and cause City crews or private contractors to take such reasonable actions that are necessary to immediately abate the activity or activities and/or condition or conditions causing the public nuisance.

#### **16.18.1401 Inventory discarded items.**

Prior to the City performing any abatement work pursuant to EGMC Section 16.18.1400, the authorized enforcement officer who caused the summary abatement shall, if feasible, cause an inventory to be taken which lists those items which are proposed to be removed from the property and discarded.

#### **16.18.1402 Preparation of summary abatement report.**

Prior to ordering summary abatement pursuant to this chapter, the authorized enforcement officer who caused the summary abatement shall prepare a written report

which sets forth in writing the facts and circumstances establishing: (A) why advance notice of the abatement to the property owner, occupant and/or agent having charge or control is not reasonable or feasible or why prior advance notice was not effective; (B) why the subject property constitutes a public nuisance; and (C) why immediate abatement of the public nuisance is necessary.

**16.18.1403 Filing of original summary abatement report.**

The original of the summary abatement report shall be filed with the City Clerk.

**16.18.1404 Method and manner of service of summary abatement report.**

A copy of the summary abatement report shall be served as soon as possible to the owner(s) of record of the parcel of land on which the public nuisance exists by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county or as known to any City officer or other enforcement officer. If no address of any such person so appears or is otherwise known, then a copy of the summary abatement report shall be so mailed, addressed to such person(s), at the address of the subject premises. The failure of any such person(s) to receive a copy of the summary abatement report shall not affect the validity of any proceedings or actions taken under this chapter.

**16.18.1405 Proof of service of summary abatement report.**

Proof of service of the summary abatement report shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to a copy of the summary abatement report and retained by the officer or agent who prepared the summary abatement report.

**16.18.1406 Attorneys' fees.**

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

**16.18.1407 Responsibility for public nuisance abatement costs.**

If the City elects to perform public nuisance abatement work pursuant to this chapter, the owner of record of the property shall be liable for all costs of abatement incurred by the City.

## **Article XV. Public Nuisance Abatement Costs**

### **16.18.1500 Responsibility for public nuisance abatement costs.**

If the City elects to perform public nuisance abatement work pursuant to this chapter, the owner of record of the property shall be liable for all costs of abatement incurred by the City, including, but not limited to, administrative costs.

### **16.18.1501 Recovery of attorneys' fees.**

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

### **16.18.1502 Recovery of other costs associated with abatement.**

Recovery of costs pursuant to this chapter shall be in addition to and shall not limit any prevailing party's right to recover any cost that a prevailing party is entitled to recover by law.

### **16.18.1503 Preparation of abatement cost report.**

Upon completion of any abatement work performed by or under the direction of the City, the issuing Community Enhancement Inspector or other enforcement officer shall prepare an abatement cost report in the form prescribed by EGMC Section 16.18.1504 which provides an accounting of the cost, including incidental expenses, incurred as a result of abating any public nuisance on each separate lot or parcel of land where the work is performed by the City.

### **16.18.1504 Contents of abatement cost report.**

The abatement cost report shall itemize all costs associated with the rehabilitation, demolition or repair of said property, buildings or structures, including any salvage value relating thereto and a total of all such costs. The abatement cost report shall also include the following information:

- A. A description of the subject real property;
- B. The names and addresses of the persons entitled to receive notice;
- C. A description of the work completed;
- D. A determination that the amount of the costs set forth in the abatement cost report are accurate and reasonable;

E. Notice of the opportunity to appeal the amount and the reasonableness of the abatement costs; and

F. Notice of the City's intention to make the final and approved abatement costs a special assessment against the property.

**16.18.1505 Filing and recordation of abatement cost report.**

The issuing Community Enhancement Inspector or other enforcement officer shall file the original abatement cost report with the City Clerk, who shall cause the abatement cost report to be filed in the office of the Sacramento County Clerk-Recorder.

**16.18.1506 Persons entitled to service.**

The abatement cost report and any amended or supplemental report shall be served upon the record owner and/or any agent having charge or control of the property. The failure of the Community Enhancement Inspector or other enforcement officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.

**16.18.1507 Method of service of abatement cost report.**

Service of a copy of the abatement cost report shall be made upon all persons entitled thereto pursuant to EGMC Section 16.18.1506 either personally or by certified mail, postage prepaid, return receipt requested, at their address as it appears on the last equalized assessment roll of the county or as otherwise known to the issuing inspector or authorized agent. If an address of any such person does not appear on the last equalized assessment roll or is not otherwise known to the issuing Community Enhancement Inspector or other enforcement officer, then a copy of the abatement cost report shall be addressed to such person(s) and mailed to the address of the subject premises. The failure of any such person to receive a copy of the abatement cost report shall not affect the validity of any proceedings or actions taken under this chapter.

**16.18.1508 Proof of service of abatement cost report.**

Proof of service of the abatement cost report shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to a copy of the abatement cost report and retained by the issuing inspector or authorized agent.

**16.18.1509 Completion of service of abatement cost report.**

Service of an abatement cost report which is personally served shall be deemed completed at the time of such delivery. Service of an abatement cost report which is served by mail is deemed completed on the date said abatement cost report is deposited in the mail.

**16.18.1510 Appeal of abatement cost report.**

Any party possessing a legal or equitable interest including but not limited to a leasehold interest in the property that is the subject of an abatement cost report may appeal from the abatement cost report to an Administrative Appeals Officer. Such appeal shall be limited to the following issues: A) the amount of the abatement costs, and B) the reasonableness of the abatement performed.

**16.18.1511 Form for filing appeal of abatement cost report.**

All appeals from any abatement cost report shall be in writing and shall contain the following information:

- A. Name(s) of each appellant;
- B. A brief statement setting forth the legal or equitable interest of each appellant;
- C. A brief statement in ordinary and concise language of the specific cost items protested, together with any material facts claimed to support the contentions of the appellant;
- D. Brief statement in ordinary and concise language of the relief sought and the reasons why the abatement costs should be modified or otherwise set aside;
- E. The signatures of all parties named as appellants and their official mailing addresses. Any appeal filed that fails to provide all of the information required by this section shall be deemed incomplete as provided by EGMC Section 16.18.1514.

**16.18.1512 Time in which to file appeal of abatement cost report.**

A complete and proper appeal of abatement cost report as described in EGMC Section 16.18.1511 shall be filed with the City Clerk within ten (10) days from the date service of the abatement cost report is completed pursuant to EGMC Section 16.18.1509. Any appeal not timely filed shall be rejected.

**16.18.1513 Fee for filing of appeal of abatement cost report.**

A filing fee as established by City Council resolution or any amendments thereto for an appeal of abatement cost report must be paid to the City at or prior to the time of the

filing of such appeal. Any appeal of the abatement cost report filed without payment of the filing fee shall be deemed incomplete.

**16.18.1514 Incomplete filing of appeal of abatement cost report.**

Not later than five (5) days from the date the appeal is filed, the City Clerk or his or her designee shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the City Clerk or his or her designee shall immediately mail to the appellant a notice of incomplete filing which shall provide a written explanation of the reasons why the appeal has been determined to be incomplete. If service of the notice of incomplete filing is completed within five (5) days from the date the appeal is filed, the ten (10) day time period within which to file a completed appeal of abatement cost report shall not be extended.

**16.18.1515 Processing of appeal.**

The City Clerk or his or her designee shall present any appeal filed pursuant to this chapter to the Administrative Appeals Officer upon receipt of such appeal.

**16.18.1516 Stay pending appeal.**

Enforcement of the abatement cost report shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this chapter.

**16.18.1517 Failure to file appeal of abatement cost report – Final determination.**

Failure to timely and properly file an appeal from an abatement cost report shall constitute a waiver of all rights to an appeal of the abatement cost report or any portion thereof. The determination that the amount of the costs set forth in the abatement cost report is accurate and reasonable shall be deemed final on the day that service of the abatement cost report is deemed completed.

**16.18.1518 Time in which to pay abatement costs.**

The owner of record of the subject property shall pay all costs of abatement no later than thirty (30) days from the date the abatement cost report becomes final pursuant to EGMC Section 16.18.1509. The amount of the abatement costs for which the owner of record shall be responsible shall be as set forth in the final abatement cost report.

**16.18.1519 Special assessment against parcel for failure to timely pay abatement costs.**

If the abatement costs are not paid within thirty (30) days from the date the abatement cost report becomes due pursuant to EGMC Section 16.18.1509, the abatement costs may become a special assessment against that parcel.



**16.18.1520 Notice of impositions of special assessment.**

Notice of the imposition of a special assessment may be sent by certified mail, return receipt requested, to the property owner, if the property owner's identity can be determined from the records of the office of the Sacramento County Assessor or the office of the Sacramento County Clerk-Recorder. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments.

**16.18.1521 Recordation of notice of special assessment.**

The notice of special assessment shall be filed and recorded in the office of the Sacramento County Clerk-Recorder.

**16.18.1522 Sale of vacant residential developed property.**

Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the City may conduct a sale of vacant residential developed property for which the payment of an assessment is delinquent.

**16.18.1523 Treble costs abatement costs.**

Upon entry of a second (2<sup>nd</sup>) or subsequent civil or criminal judgment within a two (2) year period finding that an owner of property is responsible for a condition that may be abated pursuant to this chapter, excepting any conditions abated pursuant to Section 17980 of the California Health and Safety Code, the City is entitled to recover treble the costs of abatement from said owner.

**Article XVI. Abatement Cost Appeals Procedures**

**16.18.1600 Scheduling of appeal of abatement cost report.**

As soon as practicable after determining that a proper and complete appeal has been filed, the City Clerk or his or her designee shall schedule an appeal hearing before the Administrative Appeals Officer. Such date shall be not less than ten (10) days from the date the appeal was filed with the City Clerk.

**16.18.1601 Preparation and form of notice of administrative appeals hearing.**

As soon as practicable after scheduling the abatement costs report appeal hearing, the City Clerk shall prepare a notice of appeals hearing ("hearing notice") which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before an Administrative Appeals Officer at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of

\_\_\_\_\_, upon the Abatement Cost Report served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any evidence at the hearing which pertains to the costs of abatement and/or the reasonableness of the abatement performed.

**16.18.1602 Time for and method of service of hearing notice.**

The City Clerk or his or her designee shall, at least ten (10) days prior to the date scheduled for the appeal hearing, cause a copy of the hearing notice to be provided to each appellant either by causing a copy of said notice to be delivered to each appellant personally or by causing a copy of said notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. The City Clerk or his or her designee shall also provide a copy of said notice to the issuing inspector or authorized agent.

**16.18.1603 Report and recommendation.**

The issuing inspector or other enforcement officer shall prepare an abatement costs hearing packet for the Administrative Community Enhancement Appeals Officer to review prior to the hearing. The packet shall include a copy of the notice and order, a staff report and any evidence of the violation(s). The staff report should include a written case history, a summary of the different inspections, the status of pending permit applications, a record of conversations or correspondence with the property owner or person otherwise responsible for the violation(s), and recommended corrections and repairs.

**16.18.1604 Administrative Appeals Officer to conduct appeal hearing.**

The Administrative Appeals Officer shall conduct an administrative appeal hearing pursuant to the appeal procedures set forth in this chapter. The Administrative Appeals Officer shall review all evidence, documents, and written testimony submitted at or before the scheduled appeal hearing and shall hear all oral testimony offered at said hearing.

**16.18.1605 Rights of parties at appeals hearing.**

Each party appearing at the hearing shall have the following rights:

- A. To call and examine witnesses;
- B. To introduce documentary and physical evidence;
- C. To cross-examine opposing witnesses;

- D. To impeach any witness regardless of which party first called the witness to testify;
- E. To rebut evidence; and
- F. To be represented by anyone who is lawfully permitted to do so.

**16.18.1606 Failure to attend administrative appeals hearing.**

If an appellant fails to attend the scheduled abatement costs appeals hearing, the hearing will proceed without the appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

**16.18.1607 Administrative Appeals Officer to decide appeal.**

At the conclusion of the hearing, the Administrative Appeals Officer shall render his decisions and findings, which may include a decision to ratify the abatement cost report in its entirety, and/or modify the amount of the abatement costs to be recovered and/or modify the terms of payment of the abatement costs. If the appellant is present at the hearing, the decision(s) of the Administrative Appeals Officer shall be final at the conclusion of the hearing. If the appellant is not present at the hearing, the City Clerk shall mail notice to the appellant of the Administrative Appeals Officer's decision(s); and said decision(s) shall become final at the time said notice is deposited in the mail.

**16.18.1608 Time in which to pay abatement costs.**

The owner of record of the subject property shall pay all costs of abatement no later than thirty (30) days from the date the abatement cost report becomes final pursuant to EGMC Section 16.18.1509. The amount of the abatement costs for which the owner of record shall be responsible shall be as set forth in the final abatement cost report.

**16.18.1609 Special assessment against parcel for failure to timely pay abatement costs.**

If the abatement costs are not paid within thirty (30) days from the date the abatement cost report becomes due pursuant to EGMC Section 16.18.1608, the abatement costs shall become a special assessment against that parcel.

**16.18.1610 Attorneys' fees.**

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

## **Article XVII. Other Remedies**

### **16.18.1700 California Unfair Business Practices Act.**

The City may seek and obtain any remedies which may also be available to the City pursuant to the California Unfair Business Practices Act as set forth in Sections 17000 through 17208 of the California Business and Professions Code.

### **16.18.1701 California Drug Abatement Act.**

The City may seek and obtain any remedies which may also be available to the City pursuant to the California Drug Abatement Act as set forth in Sections 11570 through 11587 of the California Health and Safety Code.

### **16.18.1702 California Housing Law.**

The City may seek and obtain any remedies which may also be available to the City pursuant to the California Housing Law as set forth in Sections 17910 through 17995.5 of the California Health and Safety Code.

### **16.18.1703 California Red Light Abatement Act.**

The City may seek and obtain any remedies which may also be available to the City pursuant to the California Red Light Abatement Act as set forth in Sections 11225 through 11235 of the California Penal Code.

### **16.18.1704 Recovery of civil penalties.**

The Community Enhancement Manager may seek such civil penalties and other relief as may be awarded under the provisions of the unfair competition laws commencing at Section 17200 of the Business and Professions Code.

### **16.18.1705 Certificates of occupancy suspension and/or revocation.**

The Building Official may seek and order suspension and/or revocation pursuant to the Uniform Building Code and/or any applicable statute, rule, code or regulation, of any certificate of occupancy for any property which is being maintained in violation of the municipal code, and/or any applicable statute, rule, code or regulation.

### **16.18.1706 Fines – Assessments.**

A. If the fines imposed under this chapter are not paid within the time specified, such fines shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code, and shall be transmitted to the tax collector for collection and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for *ad valorem* taxes.

B. If, subsequent to service of the notice and order prior to transmittal of the notice of unpaid costs to the tax collector for collection as set forth in subsection (A) of this section, the property subject to the notice and order is sold, or title otherwise transferred to a bona fide purchaser, said costs shall be the responsibility of the owner of record as of the date said notice and order was placed in the United States Postal System or posted on the property.

C. In addition to assessing the unpaid costs as provided in subsection (A) of this section, the tax collector or his designated representative may pursue any remedy provided by law for collection of the unpaid costs.

**16.18.1707 Franchise Tax Board deduction denial.**

The Community Enhancement Manager may seek a court order that the owner not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation or amortization paid in association with the cited dwelling in accordance with provisions of Section 17980.7(b) of the Health and Safety Code and Sections 17274 and 24436.5 of the Revenue and Taxation Code.

**16.18.1708 Injunctive relief.**

The City may seek and obtain injunctive relief to enjoin any violation or continuing violation of the municipal code and/or any applicable statute, rule, code or regulation.

**16.18.1709 Penalties for maintaining substandard housing.**

Penalties for violations of the state housing law, Section 17910 et seq. of the Health and Safety Code, are set forth in Sections 17995 through 17995.5 of the Health and Safety Code.

**16.18.1710 Performance bonds.**

As part of any court action, the City is authorized to require any person responsible for causing or maintaining conditions which constitute a public nuisance to post a performance bond to ensure compliance with the municipal code and/or any applicable statute, rule, code or regulation.

**16.18.1711 Private nuisance action.**

The City may initiate and maintain a private nuisance action against any person or entity responsible for causing or maintaining conditions which constitute a nuisance as against any property of the City.

#### **16.18.1712 Receivership.**

The City may seek and obtain any remedies for an appointment of a receiver which may also be available to the City pursuant to Sections 17980 through 17992 of the California Health and Safety Code.

#### **16.18.1713 Reinspection fees.**

The fee for any reinspection shall be established by resolution of the City Council.

#### **16.18.1714 Treble costs.**

Pursuant to Section 38773.7 of the Government Code, upon entry of a second (2<sup>nd</sup>) or subsequent civil or criminal judgment within a two-year period finding that an owner or person described in Section 38772(d)(3) of the Government Code is responsible for a condition that may be abated pursuant to Section 38773.7 of the Government Code, a court may order that person to pay treble the costs of abatement.

#### **16.18.1715 Stop work orders.**

The Building Official and any other authorized agent may seek and order stop work orders pursuant to the Uniform Building Code and/or any applicable statute, rule, code or regulation, whenever any work is being done contrary to the provisions of the municipal code and/or any applicable statute, rule, code or regulation.

#### **16.18.1716 Warrants for abatement and inspection.**

Nothing in this chapter shall preclude the City from seeking abatement and/or an inspection warrant at any time and independent from any other remedy provided by the municipal code and/or any applicable statute, rule, code or regulation.

#### **16.18.1717 Cumulative remedies.**

The remedies set forth in this chapter shall be cumulative and in addition to any and all other remedies, civil, equitable or criminal, afforded to the City under the law.

### **Article XVIII. Permit and License Suspension, Modification and Revocation Procedures\***

\*Refer to EGMC Title 4, Business Regulation.

## **Article XIX. Temporary Roadside Memorials on Public Property and Rights-of-Way**

### **16.18.1810 Declaration of policy.**

The purpose of this policy is to establish the City's policy regarding the acceptable duration of ad hoc memorials on public property and rights-of-way (hereinafter "roadside memorials") and to provide standards for City staff in maintaining City property and the public right-of-way when any such roadside memorials are present.

### **16.18.1815 Findings.**

The City Council hereby finds as follows:

A. Persons who leave roadside memorials do so to express their respect and sympathy for victims of tragic incidents and intend for such memorials to be left in place for a short period of time.

B. Roadside memorials generally consist of items which either expire, such as flowers or plants, or which are composed of materials, such as cardboard or cotton, which are perishable. Memorials also consist of items which are not adequately secured and which may shift from their place of placement. Roadside memorials create safety hazards and distractions for the motoring public and pedestrians. Roadside memorials hinder proper maintenance of the public right-of-way.

C. Because of the temporary nature of the memorials, it is expressly found that after a reasonably short period of time the person or persons who leave roadside memorials have intentionally abandoned the items.

### **16.18.1820 Duration of roadside memorials.**

All items that comprise a roadside memorial and which remain in the City right-of-way or other City-owned property for a period longer than thirty (30) days shall be removed and stored for a period of time. Items that pose a safety hazard and/or a distraction for the motoring public may be removed immediately at the discretion of the City Manager, or the Manager's designee.

### **16.18.1830 Removal, storage and disposal of roadside memorial items.**

A. Upon removal of items that comprised a roadside memorial, all nonperishable items will be placed in clean containers appropriate for storage. Perishable items, including, but not limited to, food and flowers, will be discarded.

B. Contents of roadside memorials will be stored at the City's Corporation Yard under the direction and supervision of the Public Works Department. Items collected by the

City will be released to family member(s) of the roadside memorial honoree upon written request. Collected materials will be discarded by the City if not claimed within six (6) months of storage.

C. Prior to the removal of any roadside memorial items from the City's right-of-way, except items that pose a safety hazard and/or a distraction for the motoring public, City staff will notify via telephone or electronic communication the following persons or departments:

1. Receptionists for Administration, Police Department, Development Services, and the Corporation Yard;
2. Assistant City Manager – Development Services, or designee;
3. Chief of Police, or designee;
4. Executive Administrative Assistant to the City Manager; and
5. Community Enhancement Department.

For those items that have been immediately removed because it has been determined that they pose a safety hazard and/or a distraction for the motoring public, City staff will notify via telephone or electronic communication the above persons or departments as soon after removal of the items as reasonably practicable.

#### **16.18.1850 Administrative policies.**

The City Manager may adopt administrative policies to facilitate the implementation of this article.

### **Chapter 16.20**

#### **ELK GROVE HOUSING CODE**

Sections:

16.20.005 Title.

16.20.010 Purpose.

16.20.015 Findings.

16.20.020 Scope.

#### **Article I. Definitions**



16.20.100 Definitions.

**Article II. Violations and Penalties**

16.20.200 Violations.

16.20.220 Penalties and costs of enforcement.

**Article III. Administration and Enforcement**

16.20.300 Enforcement.

16.20.330 Regulations.

16.20.340 Authority to enter and inspect.

16.20.350 Substandard dwellings.

**Article IV. Enforcement Proceedings**

16.20.400 Notice and order.

16.20.405 Service of notice and order.

16.20.410 Notice of pending enforcement action.

16.20.420 Repair or demolition.

16.20.430 Administrative hearings – Generally.

16.20.435 Record of oral evidence at hearing.

16.20.440 Continuances.

16.20.445 Oaths – Certification.

16.20.450 Evidence rules.

16.20.455 Rights of parties.

16.20.460 Official notice.

16.20.465 Inspection of premises.

16.20.470 Form and contents of decision – Finality of decision.

16.20.475 Service of the Hearing Officer's decision.

16.20.480 Challenge to decision of Hearing Officer.

16.20.485 Notice to vacate.

16.20.490 Notice to occupants.

16.20.495 Nonexclusive remedies.

#### **Article V. Appeal**

16.20.500 General.

16.20.560 Appeal hearings.

16.20.570 Effect of failure to appeal.

16.20.580 Costs on appeal.

#### **Article VI. Enforcement of the Order of the City Council or the Director**

16.20.600 Compliance.

#### **Article VII. Abatement of Nuisances**

16.20.700 Other remedies.

16.20.710 Repair and demolition fund.

16.20.750 Recovery of costs of enforcement.

16.20.755 Costs – Assessments.

16.20.760 Treble costs.

#### **Article VIII. Housing Code Enforcement Fund**

16.20.800 Establishment and definition.

16.20.805 Purposes of limitations.

16.20.810 Administration.

16.20.815 Use and disbursement of monies in the fund.

16.20.820 Annual evaluation.

#### **Article IX. Reserved**

#### **Article X. Rent Escrow Account Program**

16.20.1000 Title.

- 16.20.1001 General.
- 16.20.1003 Pre-review procedures.
- 16.20.1004 REAP acceptance procedure.
- 16.20.1005 Application for release of funds.
- 16.20.1006 Duties of the Director.
- 16.20.1007 Appeals.
- 16.20.1008 Escrow account.
- 16.20.1009 Removal from regulation.
- 16.20.1010 Disallowance of rent increases.

**Article XI. Rental Housing Enforcement Fees**

- 16.20.1100 Reinspection fee.
- 16.20.1105 Notice and order fee.
- 16.20.1110 Building permit fee.
- 16.20.1115 Building permit surcharge.
- 16.20.1120 Hourly rate.
- 16.20.1125 Contract administration fee.
- 16.20.1130 Small claims collection fee.
- 16.20.1135 Appeal fee.
- 16.20.1140 Late fee.
- 16.20.1145 Notice fee.
- 16.20.1150 Closing fee.

**16.20.005 Title.**

This chapter shall be known as the "Elk Grove housing code," and may be cited as such.

### **16.20.010 Purpose.**

A. The City is under a state mandate to have a program to enforce the provisions of the State Housing Law. Unsafe housing is a community blight often associated with unlawful activity. While the cost of enforcement is significant, the result of failing to abate substandard housing has more adverse and far reaching consequences such as loss of housing and displaced individuals.

B. Studies show that complaint initiated enforcement actions are sufficient to provide the essential level of abatement of substandard housing conditions needed by this community. An increased level of service which includes routine inspections of rental housing units has been determined to be cost prohibitive at this time, but may be incorporated in the future if the need is demonstrated and necessary funding is secured.

C. Having determined the appropriate level of service to be provided by a housing code enforcement program, it is also determined that those persons who violate the State Housing Law should bear the greatest practical share of the costs of operating such a program through enforcement fees and penalties. However, the establishment of such a program requires revenue to fund its implementation costs and to fund the difference between the ongoing costs of such a program and the revenue collected from violators through enforcement fees and penalties. The source of this revenue must be reliable if such a program is to achieve its objectives. Collection of enforcement fees and penalties is inherently unreliable as a funding source, and therefore cannot be relied upon either to establish the initial operating revenue for such a program or to fully support its ongoing operational costs.

D. It is therefore necessary to levy a housing stock conservation fee for the purpose of generating the revenue required to fund the implementation and ongoing operating costs of such a program. The housing stock conservation fee will be adjusted annually for the purpose of maintaining an adequate Housing Code Enforcement Fund balance, including prudent reserves. The housing stock conservation fee is a supplemental funding source for this program, intended to make up for any actual or forecast deficiencies in total program costs not generated from the collection of enforcement fees and penalties from violators.

In the City of Elk Grove, substandard housing has caused health risks to its occupants and those who reside in the surrounding neighborhood. Additionally, substandard housing has significantly contributed to neighborhood blight. As a result, substandard housing is a nuisance that threatens the health and welfare of many members of the Elk Grove community.

To eliminate this nuisance it is imperative to establish enforceable minimum standards for residential buildings. The purpose of this chapter is to establish such standards for

maintaining all residential buildings in the City and thereby safeguard the life, limb, health, property, safety, and welfare of the public.

#### **16.20.015 Findings.**

The City Council finds as follows:

A. It is imperative to establish enforceable minimum standards for residential buildings and to provide a program for enforcing these standards which is self-supporting.

B. Complaint initiated enforcement actions are sufficient to provide the essential level of abatement of substandard housing conditions needed by this community.

C. Violators of the State Housing Law must bear the largest feasible share of the cost of housing code enforcement.

D. Rental property owners derive a substantial benefit from a housing code enforcement program and should therefore contribute to a portion of program costs.

E. Residents of rental property also benefit from a housing code enforcement program and should therefore contribute to program costs indirectly through the cost of renting such housing.

F. It is necessary to establish an operating fund, which is separate from the City's General Fund, for the purpose of implementing a housing code enforcement program and operating it on an ongoing basis. It is necessary that this source of funds be predictable and reliable for the efficient and continued operation of such a program. The imposition of a housing stock conservation fee is an appropriate means to accomplish this purpose.

G. It is recognized that the majority of rental housing property owners comply with the State Housing Law and applicable City ordinances, and that only a relatively small percentage violate these laws. And while it is the intent of this chapter that this group of violators should pay for as much of the cost of a housing code enforcement program as is practical and feasible, it is also recognized that the collection of enforcement fees and penalties from violators can be a protracted and costly process, and that reliance thereupon as the sole source to fund such a program is inherently speculative and unrealistic. Therefore, while the primary source of revenue for this housing code enforcement program is intended to come from the collection of enforcement fees and penalties from violators, in their absence, the housing stock conservation fee is intended to make up program cost deficiencies. The reliance of such a program on the City's general fund for its cost of operation shall be minimized to the greatest extent possible.

H. This chapter satisfies the City's legal obligations under the State Housing Law.

### **16.20.020 Scope.**

The provisions of this chapter shall apply to all new and existing buildings or portions thereof used, or designed or intended to be used, for human habitation. This chapter is not an exclusive regulation of housing within the City of Elk Grove. It shall supplement, be accumulative with, and be in addition to any and all regulatory ordinances and state or federal law existing or hereafter enacted by the City, the state or federal government or any other legal entity that may have jurisdiction.

## **Article I. Definitions**

### **16.20.100 Definitions.**

For purposes of this chapter, the following definitions shall apply:

- A. "Building" shall mean a structure or part thereof.
- B. "Building Code" is the Uniform Building Code adopted pursuant to EGMC Chapter 16.04.
- C. "Clerk" means the City Clerk, or his or her designated representative.
- D. "Complaint" means notification by any person, lodged with the Code Enforcement Division of the City of Elk Grove, of a violation or a suspected violation of the housing code or this chapter.
- E. "Demolish" means to destroy a building and to remove all debris and waste materials from the lot on which the building stood.
- F. "Department" means the Planning Department of the City of Elk Grove.
- G. "Director" shall mean the Planning Director of the Planning Department of the City of Elk Grove or his or her designated representatives.
- H. "Displaced". A tenant is "displaced," within the meaning of this chapter, if the tenant is ordered to move out of a rented dwelling unit or structure by an order to vacate issued by the City.
- I. "Dwelling" shall mean any building or structure or part thereof used and occupied for human habitation or intended to be so used, and includes any garages or other accessory buildings belonging thereto, including those which are rented or leased for any term or duration, type or tenure.

J. "Dwelling unit" shall mean any room or group of rooms located within a dwelling and forming a single unit with the facilities which are used or intended to be used for living, sleeping, cooking, or eating.

K. "Electrical Code" is the National Electrical Code as adopted and as modified by the City of Elk Grove Electrical Code set forth in EGMC Chapter 16.28.

L. "Enforcement" means diligent effort to secure compliance or abatement, including review of plans and permit applications, response to complaints, citation of violations, and other legal process. Except as otherwise provided in this chapter, "enforcement" may, but need not, include inspections of existing buildings on which no complaint or permit application has been filed, and efforts to secure compliance as to such existing buildings.

M. "Fire Code" is the Uniform Fire Code adopted pursuant to EGMC Chapter 17.04.

N. "Hearing Officer" means an active member of the Bar of the state of California appointed by the City Manager to hear matters as provided for and described in this chapter. The Hearing Officer shall also serve as the housing appeals board as that term is used in the State Housing Law.

O. "Housing code" means this chapter and includes the building code, the electrical code, the mechanical code, the plumbing code and the State Housing Law.

P. "Housing code enforcement fund" means the Housing Code Enforcement Fund established by this chapter.

Q. "Housing stock conservation fee" means the fee assessed under this chapter for each rental dwelling unit.

R. "Landlord" means an owner, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) who receives or is entitled to receive rent for the use of any dwelling, or the agent, representative, or successor of any of the foregoing.

S. "Mechanical Code" is the Uniform Mechanical Code adopted pursuant to EGMC Chapter 16.32.

T. "Order to vacate" means a written notice served by an authorized City official on the owner and posted on the affected property declaring that, due to failure to repair or maintain, the dwelling shall be vacated.

U. "Occupant" shall mean any person over one year of age living, sleeping, cooking, or eating in, or having actual possession of a dwelling unit.

V. "Owner" means the owner of fee title to a dwelling unit.

W. "Parties in interest" shall mean all persons, businesses, partnerships, and corporations who have a mortgage or other interest of public record in a dwelling or dwelling unit, or who are in possession thereof.

X. "Plumbing Code" is the Uniform Plumbing Code adopted pursuant to EGMC Chapter 16.24.

Y. "Program" means the housing code enforcement program created under this chapter.

Z. "Proof of compliance" means documentation, on such form and in such manner as the Director may provide, that the deficiencies noted in the order or citation issued by the City have been corrected.

AA. "Public record" shall mean deeds, mortgages and other instruments of record relating to land titles and recorded by the Sacramento County Clerk-Recorder.

BB. "REAP" means the rent escrow account program provided by this chapter.

CC. "REAP account" means the account established by this chapter, of that name, which shall be established and maintained by the Finance Director of the City either as an account or a fund, and may, for the purpose of accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice.

DD. "Repair and demolition fund" means the fund established by this chapter, of that name, which shall be established and maintained by the Finance Director of the City either as an account or a fund, and may, for the purpose of accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; all such records with respect to any such fund shall at all times be maintained in accordance with sound accounting practice.

EE. "Rental dwelling unit" means a dwelling unit rented for any tenure, type or price.

FF. "Fire Chief" shall mean the Fire Chief of the Cosumnes Community Services District Fire Department.

GG. "State Housing Law" means Division 13, Part 1.5 of the Health and Safety Code (commencing at Section 17913) and Article I (commencing at Section 1) of Chapter 1, Title 25 of the California Code of Regulation.

HH. "Substandard dwelling" shall have the same meaning as substandard building as set forth in Section 17920.3 of the Health and Safety Code, or any successor statute.



II. "Tenant" means the individual or individuals occupying a rental dwelling unit.

JJ. "Untenantable Rental Dwelling Unit". A rental dwelling unit shall be deemed "untenantable," for the purposes of this chapter, if it or the common area of the dwelling, structure, or premises in which it is located is the subject of a Housing Code citation or order pursuant to this chapter and substantially lacks any of the affirmative standard characteristics set forth in Section 1941.1 of the Civil Code.

KK. "Vacation date" means the date by which a tenant is required to vacate a rental dwelling unit, pursuant to an order by an authorized City official.

## **Article II. Violations and Penalties**

### **16.20.200 Violations.**

A. Existence of a Substandard Dwelling. All dwellings, or portions thereof, shall be maintained, repaired or reconstructed in accordance with the Housing Code. Any dwelling, or portion thereof, which has become a substandard dwelling as defined herein is declared to be a nuisance and a misdemeanor and shall be abated through correction, repair, reconstruction or demolition in accordance with applicable provisions of this chapter.

B. Rent or Lease of Substandard Dwelling. It shall be unlawful and a violation of this code for the owner(s) or parties in interest of any dwelling, or portion thereof, that is a substandard dwelling to rent or lease, or to offer for rent or lease the substandard dwelling, or any portion thereof. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

C. Failure to Obey Notice and Order. It shall be unlawful and a violation of this code for any owner to fail or refuse to comply with the terms and provisions stated in any notice and order issued under this chapter. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

D. Rental without Inspection. It shall be unlawful and a violation of this code for any owner or party in interest to rent to another person a vacant dwelling unit which is the subject of a pending enforcement action under this chapter, until such dwelling unit has been inspected by the City for Housing Code compliance, and has passed such inspection, and written evidence thereof has been received. For purposes of this section, a dwelling unit is the subject of a pending enforcement action under this chapter if all repairs and work required by a notice and order previously issued, amended, or supplemented by the City concerning such dwelling unit have not been

completed with all required building permit inspections finalized. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

E. Removing Notice and Order without Inspection. It shall be unlawful and a violation of this code for any individual to remove a notice to vacate attached to the structure of a vacant dwelling unit which is the subject of a pending enforcement action under this chapter, until such dwelling unit has been inspected by the City for housing code compliance, and has passed such inspection, and written evidence thereof has been received. For purposes of this section, a dwelling unit is the subject of a pending enforcement action under this chapter if all repairs and work required by a notice and order previously issued, amended, or supplemented by the City concerning such dwelling unit have not been completed with all required building permit inspections finalized. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

F. Removing Boards. It shall be unlawful and a violation of this code for any person to remove, deface or destroy any boards placed by the Director pursuant to EGMC Chapter 16.23 without prior written permission of the Director. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

#### **16.20.220 Penalties and costs of enforcement.**

A. Any person violating this code may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

B. Fines. The City may seek, in addition to all other remedies available at law, criminal sanctions, contempt and other penalties provided for under Chapter 6, Division 1.5 of the Health and Safety Code (commencing at Section 17995).

C. Administrative Civil Penalties.

1. Imposition. In addition to any other remedies provided by this code or state law, there is hereby imposed an administrative civil penalty of up to Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars for each violation of this chapter. Notice of any administrative civil penalty shall be served and proof of service shall be made in the same manner as provided in EGMC Section 16.20.405(D). The notice shall provide that any administrative civil penalty imposed shall be administratively reviewed by a Hearing Officer before it is enforced. When violation of this chapter pertains to a continuing violation of building, plumbing, or electrical issues that do not create an immediate danger to health or safety, as determined by the Director, or designee, the violator shall be provided with a reasonable time to correct or otherwise remedy the violation prior to

imposition of the penalty. The Director, or designee, shall determine and notify the violator of the time within which the violator must correct or remedy the violation. That notice shall provide that an administrative civil penalty will be imposed if the continuing violation is not remedied or corrected within the time stated.

2. Administrative Review. Enforcement of the administrative civil penalty imposed by the Director, or designee, shall be by written order issued by the Hearing Officer following notice and an opportunity for hearing. Procedures concerning notice, conduct of the hearing, and service shall be as provided herein. The order of the Hearing Officer concerning the administrative civil penalty shall be in writing resolving the essential issues raised and confirming, amending or rejecting the administrative civil penalty imposed by the Director, or designee. In reaching a decision concerning any administrative civil penalty, the Hearing Officer shall be guided by factors including, but not limited to: the danger to public health, safety and welfare represented by the violation, recidivism, and any economic benefit associated with noncompliance.

3. Judicial Review. The manner of contesting the final order of the Hearing Officer concerning any administrative civil penalty is governed by Section 53069.4 of the Government Code, or any successor provision thereto. Service of the notice of appeal authorized by Section 53069.4 of the Government Code upon the City shall be served upon the City Clerk.

D. Separate Offense for Each Day of Violation/Continuing Violation. Each person violating this chapter shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter or a failure to comply with any regulation adopted pursuant to EGMC Section 16.20.330 is committed, continued, or permitted by any such person. Any violation which persists for more than one day is deemed a continuing violation for the purpose of this chapter.

E. Payment of Costs of Enforcement/Collection. In addition to any penalty, sanction, fine or imprisonment, each person who violates the provisions of this chapter, or who is convicted of any violation of any provision of this chapter, or who fails to comply with any regulation adopted pursuant to EGMC Section 16.20.330, shall be required to pay any and all expenses of enforcement including those costs necessary to bring the dwelling, building or portion thereof into compliance with this chapter and any regulation adopted pursuant to EGMC Section 16.20.330. In addition to all remedies herein contained, the City may pursue all reasonable and legal means in collecting those sums authorized and due.

F. Attorneys' Fees. Pursuant to Section 25845 of the Government Code, attorneys' fees may be recovered by the prevailing party. However, in no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party

exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

### **Article III. Administration and Enforcement**

#### **16.20.300 Enforcement.**

The City of Elk Grove Planning Department is hereby authorized and directed to administer and enforce the housing code, all of the provisions set forth in this chapter, and all regulations approved and adopted by the City Council as provided in EGMC Section 16.20.330. For such purposes, the Director shall have the powers of a law enforcement officer.

#### **16.20.330 Regulations.**

The Director may present to the City Council for approval and adoption those regulations which seem consistent with the purposes, intent, and express terms of this chapter as he or she deems necessary to implement such purposes, intent, and express terms. No regulation or amendments thereto shall be enforced or become effective until thirty (30) days following the date on which the proposed regulation or amendment has been approved by the City Council and filed with the Clerk. The Director shall have the power to render interpretations of this chapter and its regulations in order to clarify the application of its provisions. Such interpretations shall be in conformity with the intent and purpose of this chapter.

#### **16.20.340 Authority to enter and inspect.**

A. The Director, subject to the consent given by an occupant who reasonably appears to be at least sixteen (16) years of age, has authority to enter and inspect any dwelling or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of this chapter and any regulation adopted pursuant to EGMC Section 16.20.330. In the event consent of the occupant is not available, the Director may obtain an inspection warrant pursuant to the provisions set forth in the Code of Civil Procedure (commencing at Section 1822.50).

B. The owner, authorized agent of any owner, or any of the parties in interest of any dwelling, or portion thereof, may enter the dwelling, subject to the consent of the occupant, whenever necessary to carry out any instructions, or perform any work required to be done pursuant to this chapter and any regulation adopted pursuant to EGMC Section 16.20.330.

C. Subject to the provisions of Sections 1822.50 et seq. of the Code of Civil Procedure concerning inspection warrants, no person authorized by this section to enter dwellings shall enter any dwelling between the hours of 6:00 p.m. of any day and 8:00 a.m. of the succeeding day without the consent of the occupants of the dwelling.

#### **16.20.350 Substandard dwellings.**

All dwellings or portions thereof which are determined to be substandard are hereby declared to be public nuisances and shall be abated by repair, demolition or vacation in accordance with the procedure specified in Article IV of this chapter, or in any other manner provided by law.

### **Article IV. Enforcement Proceedings**

#### **16.20.400 Notice and order.**

A. Commencement of Proceedings. Whenever the Director has inspected or caused to be inspected any dwelling, and has determined that a violation of this chapter exists, the same being declared to be a public nuisance, the Director shall institute any appropriate action or proceedings to abate the violation by repair, rehabilitation, vacation or demolition of the building consistent with the procedures established herein or otherwise available by law.

B. Notice and Order. The Director shall issue a notice and order directed to the owner(s) of the dwelling as shown in the public record, and to all parties in interest. The notice and order shall contain:

1. Address. The street address and assessor's parcel number or such other legal description sufficient for identification of the premises upon which the dwelling is located.

2. Nature of Violation. A statement that the Director has found the dwelling or portion thereof to be substandard and a brief factual description of each and every condition found to render the dwelling or portion thereof substandard as defined in this chapter.

3. Action Required. A statement of the action required to be taken as determined by the Director. The statement of the action required may advise as follows:

a. Repair. If the Director has determined that a dwelling must be repaired, then the Director shall order the dwelling or portion thereof to be repaired, that all required permits be secured therefor, and that the repair work shall actually commence within thirty (30) days from the date of the order, and shall be completed within such time

as the Director shall determine is reasonable under all of the circumstances, including the purposes and intent for enactment of this chapter.

- b. **Choice between Repair and Demolition.** The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the Director shall require that the building be brought into compliance with this chapter according to a reasonable and feasible schedule for expeditious repair. If the owner chooses to demolish the dwelling, all required permits for demolition must be secured within thirty (30) days from the date of the order and the demolition completed within such time as the Director shall determine is reasonable under all of the circumstances, including the purposes and intent for enactment of this chapter. If the owner fails to make a timely choice, fails to repair on schedule, or selects an option which cannot be completed in a reasonable time, as determined by the Director, for any reason, the City may itself institute abatement actions, including demolition if it determines repair is not economically feasible, and may thereafter seek to recover all costs thereby incurred from the owner which may become a lien against the subject property as a special assessment collectable in the same manner as City taxes.
- c. **Vacation.** If the Director has determined that the building or portion thereof is in such condition as to make it immediately dangerous to the life, health, property or safety of its occupants, the public or adjacent property, the order shall require that the building or portion thereof shall be vacated within a time certain from the date of the order as determined by the Director to be reasonable under all of the circumstances, including the safety of the occupants and the public, as well as the purposes and intent for enactment of this chapter.
- d. **Securing Against Entry.** If the building is to be vacated, the Director shall require also that the building or portion thereof be boarded and fenced against entry as provided in EGMC Chapter 16.23. The specifications for the boarding of vacant properties, dated August 1987, issued by the United States Department of Housing and Urban Development, or such other similar plans and specifications for boarding vacant properties as may be promulgated by state or federal agencies and are designed to adequately protect against entry without creating any unreasonable risk to the life, health, property, safety, or welfare of the public shall be followed.
- e. **Eliminate Risk of Hazardous Material.** If, following an inspection of a building or any portion thereof, the Director determines, in writing, that there is reasonable cause to believe that, because of the presence of friable asbestos or other hazardous material, there is a serious risk to the life, health, property, safety, or welfare of its occupants, the public, or the adjacent neighborhood, then the Director may order the owner of the building or the portion thereof to take all steps necessary to eliminate the risk within a time certain from the date of the order as determined by the Director

to be reasonable under all of the circumstances, including the safety of the occupants and the public, as well as the purposes and intent for enactment of this chapter. To confirm the elimination of the risk, the owner of the building or portion thereof shall, at his or her expense and within the same time certain as established in the order, obtain the services of a qualified health professional acceptable to the Director to perform a comprehensive site assessment and prepare a written report to the Director detailing the absence of the risk.

4. Time Requirement to Commence Required Work. Statements advising that if any required repair or demolition work is not commenced within the time specified, the Director may, if warranted, order the building vacated and posted to prevent further occupancy until the work is completed, and may proceed to cause the work to be done and charge the costs thereof against the property or to its owner, or both.

5. Possible Sanctions for Noncompliance. Statements advising that if all required actions are not completed in accordance with the order and in compliance with the housing code, any or all of the following remedies may be employed:

- a. Assessment of reinspection fees as described in Article XI of this chapter;
- b. Enjoin owner from collecting rents, encumbering or transferring the property;
- c. Assessment of all costs of enforcement and abatement as a lien against the property, including costs for: inspections, repair, boarding and fencing, vacation, demolition, appointment of a receiver and all costs and fees of the receiver including the receiver's power to encumber the property, relocating the occupants for up to one hundred twenty (120) days, and reasonable attorneys' fees and costs;
- d. Civil contempt orders ranging in civil penalties up to Two Thousand Five Hundred and no/100<sup>ths</sup> (\$2,500.00) Dollars per violation in certain instances, and up to Six Thousand and no/100<sup>ths</sup> (\$6,000.00) Dollars per violation in other instances;
- e. Criminal misdemeanor and/or infraction convictions ranging in criminal fines up to One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars and six (6) months in jail per violation in certain instances, and up to Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars and twelve (12) months in jail per violation in other instances;
- f. Inability to deduct from state taxes expenses for interest, taxes, depreciation or amortization associated with the building; and
- g. Certain other injunctive and legal relief as may be warranted under the particular circumstances presented.

6. Notice to Appear and Show Cause. A notice to the owner and all parties in interest to appear before the City Hearing Officer, at a set date, time and location, but in no event less than twenty (20) days after the notice has been mailed, to show cause why the premises should not be declared a public nuisance and the same ordered abated by the owner, or by the City at the owner's expense. If the Director has determined that occupants must vacate the premises, the notice to appear shall also require that the owners and all parties in interest show cause why vacation of the premises should not be ordered and the premises secured by the City at the owner's expense. The notice shall state that conduct of the hearing will be pursuant to the provisions set forth in Section 11513(a), (b) and (c) of the Government Code. The owner and any party in interest may appear at the hearing and offer evidence in this matter.

7. Voluntary Abatement Option. A statement advising the owner and all parties in interest that they have the option of voluntarily abating the nuisance prior to the date set for hearing by either repair or demolition of the premises. The owner and/or the parties in interest must advise the Director in writing prior to the hearing date that they will abate the nuisance, and the date of scheduled completion thereof. The Director will inspect the premises on the scheduled completion date, and if the nuisance has been abated to the Director's satisfaction, the hearing will be taken off the calendar. If the owner and/or the parties in interest choose voluntary abatement, such abatement must be completed in accordance with all applicable City codes, including issuance of and inspection pursuant to required permits. Voluntary abatement must be completed prior to the hearing date or any extension thereof granted by the Hearing Officer.

8. Failure to Appear. A statement advising the owner and all parties in interest that their failure to appear at the administrative abatement hearing waives any right to an administrative hearing, a determination of this matter and their right to appeal the determination of this matter.

9. Scope of Hearing. A statement that the Director may offer evidence in support of the existence of the following conditions concerning the subject property:

- a. A dangerous building or structure exists on the property;
- b. The repairs or demolition required to correct the violations have not been accomplished; and
- c. Tenants or occupants, if any, must be ordered to vacate.

10. Possible Orders. A statement that, if the Hearing Officer finds by a preponderance of the evidence that the above described conditions exist concerning the premises, the Hearing Officer may then order that the City directly or by contract, and without further notice or consent of the owners or any party in interest:



- a. Repair. Repair the premises in a manner appropriate under the circumstances; or
- b. Demolish. Demolish the premises in a manner appropriate under the circumstances if the Hearing Officer also finds by a preponderance of the evidence that it is not economically feasible under the housing code standard to repair the premises; or
- c. Vacation. Vacate the premises in a manner appropriate under the circumstances if the Hearing Officer also finds by a preponderance of the evidence that occupants of the premises are or will be endangered by the condition of the premises or the abatement enforcement actions.

11. Lien for All Costs of Abatement. A statement that upon completion of all repairs or demolition the Director may present all costs of enforcement, including costs of repair or demolition ordered under this chapter, to the City Council for review and confirmation and possible assessment as a lien against the subject property as provided under EGMC Section 16.20.750 concerning recovery of costs of repair or demotion.

12. Possible Sanctions for Noncompliance. A statement advising that if all required actions are not completed in accordance with the order and in compliance with the housing code, any or all of the following remedies may be employed:

- a. Assessment of reinspection fees as described in Article XI hereof;
- b. Enjoin owner from collecting rents, encumbering or transferring the property;
- c. Assessment of all costs of enforcement and abatement as a lien against the property, including costs for: inspections, repair, boarding and fencing, vacation, demolition, appointment of a receiver and all costs and fees of the receiver including the receiver's power to encumber the property, relocating the occupants for up to one hundred twenty (120) days, and reasonable attorneys' fees and costs;
- d. Civil contempt orders ranging in civil penalties up to Two Thousand Five Hundred and no/100<sup>ths</sup> (\$2,500.00) Dollars per violation in certain instances, and up to Six Thousand and no/100<sup>ths</sup> (\$6,000.00) Dollars per violation in other instances;
- e. Criminal misdemeanor and/or infraction convictions ranging in criminal fines up to One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars and six (6) months in jail per violation in certain instances, and up to Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars and twelve (12) months in jail per violation in other instances;
- f. Inability to deduct from state taxes, expenses for interest, taxes, depreciation or amortization associated with the building; and
- g. Such other injunctive and legal relief as may be warranted under the particular circumstances presented.

**16.20.405 Service of notice and order.**

A. Parties Entitled to Service. The notice and order, and any amended or supplemental notice and order, shall be served upon the owner, the occupant(s) and every party in interest as well as posted on the property, and one copy thereof shall be served on each of the following if known to the Director or disclosed from the public record:

1. The holder of any mortgage or deed of trust or other lien or encumbrance of record;
2. The owner or holder of any lease of record; and
3. The holder of any other estate or legal interest of record in or to the building or portion thereof or the land on which it is located.

B. Effect of Failure to Serve Notice. The failure of the Director to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served, or relieve any such person from any duty or obligation imposed on him or her by the provisions of this section or by law.

C. Method of Service.

1. Address Known. Service of the notice and order shall be made on all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the last equalized assessment roll of the City or as known to the Director. Service shall be effective for all purposes upon receipt if personally served, or within five (5) days of mailing as herein provided.

2. Address Unknown. If no address of any such person so appears or is known to the Director, then a copy of the notice and order shall be mailed, addressed to such person, to the address of the building or portion thereof involved in the proceedings. The failure of any such person to receive such notice and order shall not affect the validity of any proceedings taken under this section or by law.

D. Proof of Service. Proof of service of the notice and order shall be certified at the time of service by a written declaration under penalty of perjury executed by the person(s) effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Director.

**16.20.410 Notice of pending enforcement action.**

A. Notice of Pending Enforcement Action. If compliance with an order is not had within the time specified therein or any extension authorized by the Director, and no appeal

has been properly and timely filed, the Director shall file in the office of the Sacramento County Clerk-Recorder a notice describing the property and certifying that: (1) the dwelling or portion thereof is a nuisance as defined in this chapter; and (2) the owner has been so notified.

B. Certificate of Abatement. Whenever the repairs ordered shall thereafter have been completed or the dwelling demolished so that it no longer exists as a nuisance on the property described in the certificate, the Director shall file a new certificate with the Sacramento County Clerk-Recorder certifying that the dwelling or portion thereof has been repaired, or demolished, and that the dwelling or portion thereof is no longer a nuisance, whichever is appropriate under the circumstances.

#### **16.20.420 Repair or demolition.**

A. Owner's Choice. Upon issuance of a notice and order, the owner shall have the choice of repairing or demolishing the dwelling or portion thereof at issue. However, if the owner chooses to repair the dwelling, the Director shall require that the dwelling be brought into compliance according to a reasonable and feasible schedule for expeditious repair.

B. City's Authority to Act. Where the Director determines in light of the purpose and intent of this chapter that the violations of this chapter are extensive and of such a nature that the health and safety of the occupants or the public is substantially endangered, the City itself may cause the vacation of the dwelling, repair, demolish or institute any other appropriate action or proceeding if any of the following occur:

1. The repair work is not done as scheduled.
2. The owner does not make a timely choice of repair or demolition.
3. The owner selects an option which cannot be completed within a reasonable period of time, as determined by the Director, for any reason, including, but not limited to, an outstanding judicial or administrative order.

C. Preferences. In deciding whether to require vacation of the dwelling or to repair as necessary, the Director shall give preference to the repair of the dwelling whenever it is economically feasible to do so, without having to repair more than seventy-five (75%) percent of the dwelling, as determined by the Director, and shall give full consideration to the needs for housing in the City's housing element.

If the Director has determined that it is not economically feasible to repair the building or portion thereof, and that the dwelling must be demolished, then the Director shall require the dwelling to be vacated within such time (not to exceed thirty (30) days from the date of the order) as the Director shall determine is reasonable under all of the

circumstances including the purposes and intent for enactment of this chapter; all required permits for demolition be secured within thirty (30) days from the date of the order; and that the demolition be completed within such time as the Director shall determine is reasonable under all of the circumstances including the purposes and intent for enactment of this chapter. The economical feasibility to repair shall be determined as follows:

1. On the basis of a written appraisal of the dwelling performed by a qualified appraiser establishing its fair market value in its condition at the time of the notice and order issued under this chapter and its fair market value if repaired so as to meet the standards set forth in this chapter; and
2. On the basis of a written estimate prepared by a licensed general contractor detailing the repairs required to be made and the cost of the repairs.

Notice of the Director's determination to demolish the dwelling or portions thereof shall be given to the owner and all parties in interest upon the Director's determination that it is not economically feasible to repair the dwelling along with the notice of right to appeal such determination as provided under Article V of this chapter.

**16.20.430 Administrative hearings – Generally.**

A. At the time set for hearing, the Hearing Officer shall proceed to hear the testimony of the Director, the owner, any real party in interest, and other competent persons respecting the condition of the premises and other relevant facts concerning the matter. The Hearing Officer shall follow the rules of procedure for conducting hearings established by this code and shall render all decisions and findings in writing which shall then be served on all parties as herein provided.

B. Continuances. The Hearing Officer may, upon the request of the owner, any party in interest or the City, grant continuances from time to time for good cause shown, or upon his or her motion. A granted continuance shall in no way diminish the responsibility of the owner and/or parties in interest for maintaining the premises, nor affect other requirements of this code regarding time for challenging any decision made or actions taken.

**16.20.435 Record of oral evidence at hearing.**

The proceedings at the hearing may be reported by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. It shall be the responsibility of the Hearing Officer to certify the record of the hearing.

**16.20.440 Continuances.**

The Hearing Officer may, upon request of the owner, a party in interest, or the Director, grant continuances from time to time for good cause shown, or upon his or her own motion. Any continuance granted shall in no way diminish the responsibility of the owner and/or parties in interest for maintaining the premises, nor affect other requirements of this code regarding time for challenging any decisions made or actions taken.

**16.20.445 Oaths – Certification.**

The Hearing Officer or certified shorthand reporter shall administer the oath or affirmation.

**16.20.450 Evidence rules.**

Section 11513, subsections (a), (b) and (c) of the Government Code of the state of California as presently written or hereinafter amended shall apply to hearings conducted under this code.

**16.20.455 Rights of parties.**

Each party may represent themselves, or be represented by anyone of their choice. Each party may appear at the hearing and offer evidence in this matter and cross examine witnesses.

**16.20.460 Official notice.**

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.

**16.20.465 Inspection of premises.**

The Hearing Officer may inspect the premises involved in the hearing prior to, during or after the hearing; provided, that:

- A. Notice of such inspection shall be given to the parties before the inspection is made;
- B. The parties are given an opportunity to be present during the inspection; and
- C. The Hearing Officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.

D. Each party then shall have a right to rebut or explain the matters so stated by the Hearing Officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

**16.20.470 Form and contents of decision – Finality of decision.**

A. Form. The decision of the Hearing Officer shall be in writing, shall contain findings of fact and a determination of the issues presented, and shall be issued no later than thirty (30) days from the date of the hearing, unless the time is waived by the parties.

B. Possible Orders. If it is shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance the decision shall require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the Hearing Officer, or in the alternative, within the time designated by the Director. If the building, structure or premises is lawfully occupied, and abatement of the nuisance may not be safely accomplished under the circumstances as a result of such occupancy, the occupants may be ordered to vacate the premises under terms reasonable under the circumstances presented. The Hearing Officer may order such remedies as are reasonable under the circumstances for the protection of the public or affected property, and as are otherwise authorized by law or in equity, including the following: The owner shall be responsible for satisfying all relocation benefits, as may be required by law. The premises may be ordered fenced and boarded against entry. Regular patrol of the premises to ensure the integrity of such boarding and fencing measures may be ordered. (It is not the intent of this code to allow boarding and fencing of premises to substitute for abatement of the public nuisance; such actions are to be merely interim measures, lasting only so long as is necessary to protect the public and property until full abatement may be accomplished.) The Hearing Officer may order other measures which are reasonable and necessary for the protection of the public or property under the circumstances. The Hearing Officer's decision shall inform the owner that if the nuisance is not abated within the time and in the manner specified, the nuisance may be abated by the City, without further notice or consent of the owner or any party in interest, in such manner as may be ordered by the Hearing Officer, and the expense thereof, including all costs of enforcement, and relocation benefits required to be paid by the City as a result of the owner's failure to do so, may be made a lien on the subject property.

C. Time for Challenging Decision. The decision shall also inform the parties that the time within which one must file a challenge to the decision is governed by EGMC Chapter 1.06, as the same may be amended from time to time.

D. Decision Final. The decision of the Hearing Officer shall be final when signed and issued by the Hearing Officer and served as herein provided.

**16.20.475 Service of the Hearing Officer's decision.**

Upon issuance of the Hearing Officer's decision, the Director shall serve a copy on the owner and all parties in interest in the same manner as set forth in EGMC Section 16.20.405(A) and shall post a copy thereof conspicuously on the premises involved. Proof of service and posting of the Hearing Officer's decision shall be effected in the same manner as set forth in EGMC Section 16.20.405(D).

**16.20.480 Challenge to decision of Hearing Officer.**

Any challenge to the decision of the Hearing Officer and preparation of a record of the administrative proceeding shall be governed by the provisions of EGMC Chapter 1.06, as presently written or hereinafter amended.

**16.20.485 Notice to vacate.**

If the Director has determined that the dwelling or portion thereof is in such a condition as to make it immediately dangerous to the life, health, property or safety of its occupants, the public or adjacent property, the Director shall order that the dwelling, or portion thereof, shall be vacated within a time certain from the date of the order as determined reasonable by the Director under all of the circumstances, including the safety of the occupants and the public, as well as the purposes and intent of this chapter. The Director shall give notice of this order as provided in EGMC Section 16.20.400(B) concerning method of service and shall post such order as herein described.

The Director shall not require the vacating of a dwelling unless the Director concurrently requires expeditious demolition or repair to comply with the housing code.

A. Posting. Every notice to vacate shall, in addition to being served as provided in EGMC Section 16.20.400(B), be posted at or upon each exit of the dwelling and shall be in substantially the following form:

**UNSAFE BUILDING DO NOT ENTER OR OCCUPY**

It is a misdemeanor to occupy this building, remove boards, and/or to remove or deface this notice.

Director

Planning Department

## City of Elk Grove

B. Securing. Whenever the Director determines that a substandard dwelling constitutes an immediate threat to the public health or safety, the Director may secure the structure in accordance with the provisions in EGMC Chapter 16.23.

C. Compliance. Whenever such notice is posted, or a structure boarded pursuant to EGMC Chapter 16.23, the Director shall include a notification thereof in the notice and order issued by him or her under EGMC Section 16.20.400(B) reciting the existence of an immediate danger requiring the need to keep the premises unoccupied and specifying the conditions which cause the immediate danger. No person shall remain in or enter any dwelling which has been so posted, except that the entry may be made to repair, demolish or remove such dwelling under a proper permit issued by the Director. No person shall remove or deface any such notice after it is posted until the required repairs or demolition have been completed and approved by the Director as meeting the housing code and the other applicable standards of this chapter. No person shall remove or deface any boards without the prior written permission of the Director. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

### **16.20.490 Notice to occupants.**

Notwithstanding any provision herein to the contrary, occupants of a dwelling which is the subject of a notice and order issued under this chapter shall be provided notice of any violation described therein, including any decision by the Director or the City to vacate, repair or demolish, and the issuance of a building permit or demolition permit following issuance of such notice and order by the Director.

The notice described hereinabove may be provided either by first class mail to each affected dwelling unit, or by posting a copy of the document in a prominent place on the affected dwelling at the discretion of the Director.

### **16.20.495 Nonexclusive remedies.**

The remedies provided in this chapter are cumulative and shall be in addition to any other remedies provided by law.

## **Article V. Appeal**

### **16.20.500 General.**

A. Form of Appeal. Any person entitled to service under EGMC Section 16.20.400(B) may appeal from any notice and order, determination or any action of the Director under



this chapter by filing at the office of the City Clerk an appeal fee established by resolution of the City Council and a written appeal. The appeal shall not be deemed filed until payment of the appeal fee has been received; provided, however, by regulation adopted pursuant to EGMC Section 16.20.330, setting forth the standards and procedure, the appeal fee required hereby may be waived on the basis of financial hardship. The written appeal shall contain:

1. The names of all appellants participating in the appeal.
2. A brief statement setting forth the legal interest of each of the appellants in the building or land described in the notice and order, determination or action.
3. A brief statement in ordinary and concise language of the specific order, determination or action protested, together with any material facts claimed to support the contentions of the appellant(s).
4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order, determination or action should be reversed, modified or otherwise set aside.
5. The signature of each party named as an appellant and their official mailing address(es).
6. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

B. Time and Filing. To be timely, the appeal fee or basis for waiver of the appeal fee if a regulation providing therefor has been adopted and written appeal shall be filed within fifteen (15) days from the date of the service of such order, determination or action of the Director; provided, however, that if the dwelling or portion thereof is in such condition as to make it immediately dangerous to the life, health, property, safety, or welfare of the occupants, public, or adjacent property, and it is ordered vacated, and it is posted in accordance with EGMC Section 16.20.400 concerning posting of a notice to vacate, to be timely such appeal shall be filed within five days from the date of the service of the order, determination or action of the Director. Only those persons who have timely filed an appeal may join or be joined in an appeal herein.

#### **16.20.560 Appeal hearings.**

A. Appointment of Hearing Officers. The City Manager shall appoint active members of the State Bar of California to serve as Hearing Officer for appeals brought under this chapter. The Hearing Officer shall exercise all powers relating to the conduct of hearings until it is submitted with findings and proposed decision to the City Council for final decision. The Hearing Officer appointed herein shall, where appropriate or

necessary, serve as the housing appeals board as that term is used in the State Housing Law.

B. Processing of Appeal. Upon receipt of any appeal and appeal fee filed pursuant to this article, the Clerk shall immediately transmit a copy of the written appeal to a person appointed pursuant to this article to serve as a Hearing Officer.

C. Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the copy of the written appeal transmitted by the Clerk, the following shall occur:

1. Date. The Hearing Officer shall fix a date, time, and place for the hearing of the appeal. Such date shall be within fifteen (15) days of the filing of the appeal and payment of the appeal fee.

2. Notice. The Clerk shall give written notice of the time and place of the hearing fixed by the Hearing Officer at least five (5) days prior to the date of the hearing to each appellant by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, certified postage prepaid, return receipt requested, addressed to each appellant at his or her address shown on the appeal. Notice shall be effective upon personal delivery or five (5) days after mailing.

D. Subpoena. The Hearing Officer of the appeal for which the attendance of a witness is required may issue subpoenas and subpoenas *duces tecum*, and compensate persons subpoenaed.

1. This power shall be exercised and enforced in the same manner as the similar power granted to the City Council in Article IX (commencing with Section 25170) of Chapter 1, Part 2, Division 2 of the Government Code; except that such power shall extend only to matters within this chapter.

2. Reasonable fees and expenses may be provided for by City Council resolution for any or all such witnesses regardless of which party subpoenaed them.

3. Subpoenas shall be signed by the appropriate Hearing Officer. The issuance and service of any subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness, the reasons for the needed testimony and the materiality thereof in detail to the issues involved. The issuance of a subpoena *duces tecum* shall be obtained upon the filing of an affidavit therefor which specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved and state that the witness has the desired things in his or her possession or under his or her control. A subpoena need not be issued when the affidavit is defective in any particular.

4. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his or her possession or under his or her control as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

E. Conduct of Hearing. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Hearsay evidence may be admitted for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

1. Record. A record of the entire hearing proceedings shall be made by either a certified court reporter or any other means of permanent recording determined to be appropriate by the City Council. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established and revised from time to time by the City Council.

2. Scope. Only those matters or issues specifically raised by the appellant(s) in the written appeal shall be considered in the hearing on appeal.

3. Oaths and Certification. In any proceedings under this chapter, the City Council or the Hearing Officer has the power to administer oaths and affirmations and to certify to official acts.

4. Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

5. Rights of Parties. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any matter relevant to the issues of the hearing even though the matter was not raised in the direct examination, to impeach any witness regardless of which party first called him or her to testify, to present rebuttal evidence and to represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so. No appellant shall be required to testify without his or her consent.

6. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state. The City Council or the Hearing Officer may inspect any building

or premises involved in the appeal during the course of the appeal process, provided that: (a) notice of such inspection shall be given to the parties before the inspection is made, (b) the parties are given an opportunity to be present during the inspection, (c) and the City Council or Hearing Officer shall state for the record upon completion of the inspection the material facts observed and conclusions drawn therefrom. Each party then shall have the right to rebut or explain the matters so stated by the City Council or Hearing Officer.

F. Proposed Findings and Recommended Decision. Within ten (10) days after the conclusion of the hearing, the Hearing Officer shall transmit in writing, to the City Council his or her proposed findings of fact and recommended decision.

G. Consideration of Proposed Findings and Recommended Decision. The proposed findings and recommended decision of the Hearing Officer shall be served on the parties who shall then have five (5) days to submit written objections thereto to the City Clerk, which objections shall be incorporated into the record to be considered by the City Council. Upon receiving the proposed findings and the recommendations of the Hearing Officer, the City Council shall fix the time, date, and place to consider the Hearing Officer's findings and recommended decision. Notice of the date, time, and place of the City Council's consideration of the Hearing Officer's findings and recommended decision shall be mailed to each appellant and to the Director not less than five (5) days prior to the date fixed, unless less time is agreed upon by all of the parties.

H. Action by City Council. Following its consideration of the Hearing Officer's findings and proposed decision, and objections, if any, the City Council may:

1. Approve and adopt the proposed findings and the recommendation of the Hearing Officer; or

2. Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon the receipt thereof the City Council shall take such action as in its opinion is indicated by the evidence; or

3. Refer the matter back to the Hearing Officer with or without instructions for further proceedings; or

4. Set the matter for hearing before itself. At such hearing the City Council shall hear and decide the matter as if it had not been referred to the Hearing Officer.

I. Form of Decision. The decision of the City Council shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to each appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested.

J. Stay of Order Pending Appeal. Except for vacation orders or emergency action required to protect the health and safety of the occupants or the public, enforcement of any notice and order, determination, or action of the Director issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

**16.20.570 Effect of failure to appeal.**

Failure of any person to properly appeal, including making payment of the appeal fee in accordance with the provisions of this article, shall constitute a waiver of his or her right to an administrative hearing and adjudication of the notice and order, determination, or action, or any portion thereof.

**16.20.580 Costs on appeal.**

The City may be awarded its costs, including attorneys' fees, in defending against an unsuccessful appeal brought without substantial merit, which costs may be charged jointly and severally against the appellants and recovered as costs of enforcement as provided herein. Such an award must be based upon a finding supported by a preponderance of the evidence that the appeal was without substantial merit or was taken for the sole purpose of delay.

**Article VI. Enforcement of the Order of the City Council or the Director**

**16.20.600 Compliance.**

A. General. After any order of the City Council or the Director made pursuant to this chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey such order. Any such person who fails to comply with any such order may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

B. Failure to Obey. If, after any order of the City Council or the Director made pursuant to this chapter has become final, the person(s) to whom such order is directed shall fail, neglect or refuse to obey such order, the Director may cause such person(s) to be prosecuted under this code, or the Director may institute any appropriate action or proceeding to prevent, restrain, correct or abate the violation or nuisance.

C. Failure to Commence Work. Whenever the required repair or demolition is not commenced within thirty (30) days after any notice and order issued under this chapter becomes final:

1. If the Director has determined that the dwelling or portion thereof is in such a condition as to make it immediately dangerous to the life, health, property or safety of its occupants, the public or adjacent property, the Director may cause the dwelling or portion thereof described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

**UNSAFE BUILDING DO NOT ENTER OR OCCUPY**

You will be subject to criminal prosecution if you occupy this building, remove boards, and/or to remove or deface this notice.

Director

Planning Department, City of Elk Grove

2. In addition to posting the notice described in subsection (C)(1) of this section, the Director may board up the structure in accordance with the provisions in EGMC Chapter 16.23.

3. No person shall occupy any dwelling, or portion thereof, which has been posted and/or boarded as specified in this section. No person shall occupy such dwelling or remove or deface any such notice so posted until the repair or demolition has been completed and approved by the Director as meeting the housing code and the standards of this chapter. No person shall remove any boards placed by the Director without the prior written permission of the Director. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

D. Interference with Repair or Demolition Work Prohibited. No person shall obstruct, impede, or interfere with any officer, employee, contractor or authorized City representative or with any person who owns or holds any estate or interest in any dwelling which has been ordered repaired, vacated or demolished under the provisions of this chapter; or with any person to whom such building has been lawfully sold pursuant to the provisions of this chapter, whenever such officer, employee, contractor or City authorized representative, person having an estate or interest in such dwelling, or purchaser is engaged in the work of repairing, vacating, or demolishing any such dwelling or portion thereof pursuant to the provisions of this chapter or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this chapter. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

E. Extension of Time to Perform Work. Upon receipt of an application from the person required to conform to the order and an agreement by such person that he or she will

comply with the order if allowed additional time, the Director may, in his or her discretion, grant an extension of time, not to exceed an additional sixty (60) days, within which to complete said repair or demolition, provided that the Director determines, in writing, that such an extension of time will not create or perpetuate a situation immediately dangerous to the life, limb, health, property, safety, or welfare of the occupants, the public or the adjacent property. The Director's authority to extend time is limited to the physical repair, rehabilitation or demolition of the dwelling and will not in any way affect the time to appeal his or her notice and order, determination or action.

F. Notice of Completion – Inspection. Once the repair or demolition has been completed by the person required to conform to the order, that person shall advise the Director in writing of the completion of the repair or demolition, whichever is appropriate. The Director shall then reinspect the premises to determine compliance with the order. A fee for this reinspection may be charged to the person required to conform to the order by the Director. The amount of this reinspection fee shall be established by this chapter, and may be amended from time to time by resolution of the City Council.

## **Article VII. Abatement of Nuisances**

### **16.20.700 Other remedies.**

A. Remedies Cumulative. All of the remedies in this chapter and as provided by law shall be cumulative.

B. Repair and Demolition. In addition to the penalties set forth in Article II of this chapter, the Director may cause the dwelling, or portion thereof, to be repaired or demolished to the extent necessary to correct the conditions as set forth in the notice and order in accordance with the procedures for enforcement set forth in this chapter. The Director may require any unrepaired property that is vacant and accessible to be secured by boarding and fencing, pursuant to EGMC Chapter 16.23. If, in the Director's determination, based upon the enforcement procedures established in this chapter, the dwelling is to be demolished, the Director may cause the dwelling to be demolished or sold and then demolished and the materials, rubble and debris therefrom sold, removed and the lot cleaned. Any such repair, demolition or securing work shall be accomplished and the costs thereof paid and recovered in the manner hereafter provided in this article. The Director may cause the work to be accomplished by City personnel, or by private contract under the direction of the Director, or the Director may employ such architectural and engineering assistance on a contract basis as the Director may deem reasonably necessary. If the work is accomplished by private contract, the Director shall be entitled to recover as costs of enforcement and abatement a fee for contract administration as set and modified by the City Council from time to time. Any surplus

realized from the sale of the dwelling or the materials, rubble and debris resulting from the demolition of the dwelling, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person(s) lawfully entitled thereto. Nothing herein shall obligate the City to arrange for or sell the dwelling, the material or rubble, or any other property as a result of enforcing the provisions of this chapter, and if the City does so sell such property the proceeds realized therefrom shall be deemed reasonable under the circumstances.

C. Rent Escrow Account Program. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may establish a rent escrow account program as set forth in this chapter.

D. Recovery of Costs of Enforcement and Abatement. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may establish a program to recover all costs, including attorneys' fees, of enforcement and abatement as set forth in this chapter.

E. Recovery of Civil Penalties. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may seek such civil penalties and other relief as may be awarded under the provisions of the unfair competition laws commencing at Section 17200 of the Business and Professions Code.

F. Franchise Tax Board Deduction Denial. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may seek a court order that the owner not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation or amortization paid in association with the cited dwelling in accordance with the provisions of Section 17980.7(b) of the Health and Safety Code and Sections 17274 and 24436.5 of the Revenue and Taxation Code.

G. Appointment of Receiver. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may seek a court order appointing a receiver to do those tasks and have the powers set forth in Section 17980.7(c) of the Health and Safety Code.

H. Payment of Relocation Costs. In addition to those remedies provided in this chapter, and any other remedies provided by law, the City may seek a court order requiring the owner to pay reasonable relocation benefits to each lawful tenant as set forth in Section 17980.7(d) of the Health and Safety Code.

#### **16.20.710 Repair and demolition fund.**

A. General. The City's cost of any board-up, fencing, repair or demolition shall be paid from a separate repair and demolition fund which is hereby established as a separate



revolving fund under the control of the Director. Payments shall be made from the repair and demolition fund upon the demand of the Director solely to defray the costs which may be incurred in doing or causing to be done the necessary work of board-up, fencing, repair or demolition pursuant to this chapter for enforcing and abating violations and nuisances.

B. Maintenance of Fund. The City Council may at any time transfer to the repair and demolition fund, out of any money in the Housing Code Enforcement Fund also created by this chapter, such sums as it, in its sole discretion, may deem appropriate in order to implement the performance of the work of repair or demolition. All funds collected under this chapter shall be paid to the Finance Director who shall deposit same to the housing code enforcement fund.

C. Recovery of Costs from Owner(s). Pursuant to the procedures set forth in this chapter, the costs of all enforcement and abatement, including costs of repair or demolition undertaken pursuant to this chapter may be made a special assessment against the property involved, or may be made a personal obligation of the property owner(s), or both, as the City Council shall determine is appropriate under procedures herein established.

#### **16.20.750 Recovery of costs of enforcement.**

A. Account of Expense, Filing of Report. When proceedings under this chapter result in the correction of a violation of this code or in a final judgment that a violation exists subsequent to the date specified in any notice issued pursuant to the provisions of this code, costs of such proceedings incurred by the City may be assessed against the property. Such costs may include, but not by way of limitation, those incurred in inspecting property, publication, mailing and posting of notices, conducting hearings, processing appeals and pursuing any judicial action and attorneys' fees. It is the purpose of this section to allow the assessment against property of costs of proceedings if a violation is corrected in any manner.

Pursuant to Section 25845 of the Government Code and Section 17980.8 of the Health and Safety Code, the Director shall keep an account of the administrative and other costs of abatement, and shall submit to the City Council for confirmation an itemized written report showing such costs and their proposed assessment to the respective properties. The report shall be filed with the City Clerk not later than fifteen (15) days in advance of the confirmation hearing required below.

B. Notice of Hearing. Upon receipt of the report, the City Clerk shall schedule a public hearing to receive protests and confirm the report. A statement of the proposed assessment and notice of the time, date and place of the hearing, together with reference to the report on file with the City Clerk, shall be mailed to the owner or owners

of each parcel of property proposed to be assessed shown on the last equalized assessment roll available on the date of mailing of the notice or any other address or addresses ascertained to be more accurate. The notice shall be posted on the property. Notice shall also be served on anyone known to be in possession of the property by certified mail, postage prepaid. Such notice shall be mailed not later than fifteen (15) days in advance of the hearing. Notice of the time, date and place of the public hearing by the City Council shall be published once in a newspaper of general circulation published within the City. With respect to each property proposed to be assessed for which the name of the owner or owners is not shown on the last equalized assessment roll or no address for an owner is shown on the last equalized assessment roll, the notice shall show the name or names of the owner or owners, if such name or names are shown on the last equalized assessment roll, the assessor's parcel number, the street address of the property, if the property has an address and the address is known to the Director, the name of the street or road upon which such property abuts, if the property abuts upon a street or road, the amount of the proposed assessment and reference to the report on file with the City Clerk. Such publication shall be made not later than fifteen (15) days in advance of the hearing.

C. Hearing on Report. At the time fixed for receiving and considering the report, the City Council shall conduct a public hearing and shall receive and consider any objections from members of the general public or property owners liable to be assessed for the abatement. Written protests or objections shall specify the date, hour and description of the subject property under hearing. The City Council may continue the hearing and delegate to the City Manager or his designee the responsibility of hearing individual protests and submitting a recommendation with respect thereto; provided, that the City Council provides an opportunity for individual consideration of each project upon receipt of the recommendation by the City Manager or his designee. The City Council may modify the report if it is deemed necessary. The City Council shall then confirm the report by motion or resolution.

1. Personal Obligation. If, after the hearing at which each owner shall have the opportunity to address the issue, the City Council orders the charge to be a personal obligation of each owner of the property involved, then it shall direct the City of Elk Grove Finance Department to collect the amount of the charge on behalf of the City of Elk Grove by use of all appropriate legal remedies.

2. Special Assessment. If, after the hearing at which each owner shall have the opportunity to address the issue, the City Council orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien on the property.

#### **16.20.755 Costs – Assessments.**

A. If the costs as confirmed are not paid within thirty (30) days of the date of mailing of the notice or date of publication pursuant to EGMC Section 16.20.750, and the City Council has ordered that such costs be assessed against the property, the costs shall be assessed against the parcel of land pursuant to Section 25845 of the Government Code, and shall be transmitted to the Finance Director for collection and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for *ad valorem* taxes.

B. If, subsequent to the mailing of the notice of violation and prior to transmittal of the notice of unpaid costs to the Finance Director for collection as set forth in subsection (A) of this section, the property subject to the notice of violation is sold, or title otherwise transferred to a bona fide purchaser, said costs shall be the responsibility of the owner of record as of the date said notice of violation was placed in the United States postal system or posted on the property.

C. In addition to assessing the unpaid costs as provided in subsection (A) of this section, the Finance Director or his designated representative may pursue any remedy provided by law for collection of the unpaid costs.

#### **16.20.760 Treble costs.**

Pursuant to Section 25845.5 of the Government Code, upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner is responsible for a condition that may be abated pursuant to Section 25845 of the Government Code, except conditions abated pursuant to Section 17980 of the Health and Safety Code, a court may order the owner to pay treble the costs of abatement.

### **Article VIII. Housing Code Enforcement Fund**

#### **16.20.800 Establishment and definition.**

There is hereby created in the City Treasury a City of Elk Grove Housing Code Enforcement Fund. The Housing Code Enforcement Fund shall be an interest-bearing special revenue fund. The Housing Code Enforcement Fund shall receive all monies collected pursuant to this chapter to the extent permitted by state law. The Housing Code Enforcement Fund may receive monies from other sources.

#### **16.20.805 Purposes of limitations.**

Monies deposited in the Housing Code Enforcement Fund shall be used to enforce the housing code and provisions of this chapter. Monies placed in this Housing Code

Enforcement Fund shall be held until disbursed as provided in this article and shall be used to pay the reasonable and necessary expenses of operating the program enforcing the housing code and the provisions of this chapter, and for no other purpose.

**16.20.810 Administration.**

This Housing Code Enforcement Fund shall be administered by the City Manager who shall have the authority to manage the Housing Code Enforcement Fund consistent with this chapter and to prescribe procedures to carry out its purposes, subject to approval by City Council resolution.

**16.20.815 Use and disbursement of monies in the fund.**

Monies in the Housing Code Enforcement Fund shall be used exclusively for the reasonable and necessary expenses of operating the program and enforcing the housing code and the provisions of this chapter consistent with the City budget adopted by the City Council.

**16.20.820 Annual evaluation.**

A. Commencing one year after the effective date of the ordinance codified in this chapter, and annually thereafter, the City Manager shall report to the City Council on the status of the program.

B. The report shall include:

1. A statement of income to the Housing Code Enforcement Fund from all sources and a statement of all expenses and disbursements, and other uses of the housing code enforcement fund;
2. A statement of the number of complaints received and a statement of the number of dwelling units against which enforcement action was initiated during that year;
3. An evaluation of the efficiency and effectiveness of this chapter in enforcing the housing code; and
4. Recommendations for any changes to this chapter necessary to carry out its purposes, including any transfer of funds to the repair and demolition fund and adjustments necessary to the housing stock conservation fee.

**Article IX. (Reserved)**

## **Article X. Rent Escrow Account Program**

### **16.20.1000 Title.**

This article shall be known as the rent escrow account program of the City.

### **16.20.1001 General.**

A. Purpose. It is the purpose of the provisions of this article to provide a just, equitable and practical method, to be cumulative to and in addition to any other remedy available at law, or pursuant to this chapter to encourage compliance by landlords with respect to the maintenance and repair of dwellings, or portions thereof.

B. Scope. The provisions of this article shall apply to all dwelling units in all existing dwellings which consist of or contain one or more rental dwelling units.

C. Role of the Director. The Director shall be responsible for carrying out the provisions of this article.

D. Other Provisions of the Elk Grove Municipal Code Unaffected Hereby. The provisions of this article shall not be deemed to repeal by implication any other provision of this chapter or this code, and the adoption hereof shall not be deemed to affect or diminish the power or authority of an officer or employee of the City to condemn, demolish, or repair any building or structure erected or maintained in violation of any provision of said code. The application of the provisions of this article shall not be construed as constituting ownership, operation, or management by the City of any building.

E. Cumulative Nature of Remedies and Penalties. Unless otherwise expressly provided, the remedies and penalties provided by this article are cumulative to each other and to any other remedies or penalties available under law.

### **16.20.1003 Pre-review procedures.**

A. Referral to Hearing Officer. The Director may determine whether any building contains any untenantable dwelling unit within ten (10) days after the expiration of the period allowed for compliance with an order or citation issued by the Director where there has not been such compliance, or within ninety (90) days after the date such order or citation was issued, whichever first occurs.

The determination by the Director shall be in writing and shall contain the street address of the property, a description of the uncorrected deficiencies, the names and addresses of the landlord, any interested parties, any tenants as shown on the records of the Director, the apartment number or address of each untenantable dwelling unit, and any other information as required by such regulations as the City Council may promulgate. The Director shall specify that noncompliance with the citation or order appears to

render the building or a portion thereof untenable. In any appeal, a determination by the Director shall not be invalidated solely because required information is not included, or is inaccurate or incomplete.

B. Notice of Eligibility. Within ten (10) business days after making such determination, the Director shall give to the landlord, tenants, any interested parties and any other person who has requested such notification in writing, a notice of eligibility to place the building into REAP.

The notice of eligibility shall provide written notification to the landlord of the eligibility of the dwelling for placement into REAP and shall list the street address of the property, a description of the uncorrected deficiencies, and the apartment number or address of each untenable dwelling unit. The notice of eligibility shall specify a date and time, not less than fourteen (14) and not more than thirty (30) days from the date of the notice, at which the landlord may appear for a formal conference before the Director. The notice of eligibility shall also state that if the building is placed into REAP, the City shall establish an escrow account for the deposit of monthly rent payments, with a nonrefundable administrative fee of Fifty and no/100<sup>ths</sup> (\$50.00) Dollars per individual rent payment.

C. Manner of Giving Notice. The notice described in this section shall be given in writing and may be given either by personal delivery thereof to the landlord or by deposit in the United States Mail in a sealed envelope, first class postage prepaid, addressed to the landlord at the address known to the Director, or as shown on the last equalized assessment roll if not known. Service by mail shall be deemed to have been completed at the time of deposit in the United States Mail. The failure of any landlord or other person to receive such notice shall not affect in any manner the validity of any of the proceedings taken thereunder. Proof of giving any such notice may be made by a declaration signed under penalty of perjury by any employee of the City which shows service in conformity with this section.

D. Formal Conference. At the formal conference the landlord may demonstrate that the deficiencies have been corrected, that the landlord has obtained the necessary permits and has substantially commenced the work necessary to abate the deficiencies, or that the dwelling does not come within the scope of this article. Prior to the date specified in the notice of eligibility, the landlord, in lieu of or in addition to the personal appearance provided for in this subsection, may submit to the Director written information upon a form and with the number of copies prescribed by the Director. Such submissions shall be accompanied by a declaration stating that the information is true and correct.

**16.20.1004 REAP acceptance procedure.**

A. Final Determination. Within ten (10) days after the formal conference or the date set for the formal conference when no formal conference is held, the Director shall issue and serve upon all parties entitled to notice a final determination as hereinafter described.

B. Final Determination Process. The Director shall review each dwelling with respect to its suitability for inclusion in REAP. At the completion of the review process, the Director shall select one of the following three options:

1. Acceptance. If the Director determines that a dwelling meets each of the findings set forth in subsection (C) of this section, then the Director shall determine to accept the dwelling into REAP.

2. Rejection. If the Director determines that a dwelling does not meet all of the findings set forth in subsection (C) of this section, then the Director may determine to reject a dwelling for inclusion into REAP. The final determination shall state the reasons for the rejection and shall state that such rejection does not relieve the landlord of criminal or civil liability under any other provisions of the law, and, where appropriate, that the dwelling may be placed into REAP at a future date.

3. Suspension of Consideration. If the Director determines that a dwelling does not meet all of the findings set forth in subsection (C) of this section because work has commenced or has been completed to correct the deficiencies, and the Director has not yet issued proof of compliance, then the Director may determine to suspend consideration of the dwelling. However, the Director shall specify a date, not later than the time reasonably necessary for the landlord or interested party to complete the work and obtain the proof of compliance, at which time the Director shall reconsider the eligibility of the building for REAP.

Upon such determination of suspension, the Director shall notify the landlord, any interested parties, any tenants known to the Director, any other persons who requested notice in writing, and any other occupants of the dwelling that the building is not included in REAP at that time. The final determination shall state the reasons for the suspension and shall state that such suspension does not relieve the landlord of criminal or civil liability under any other provisions of the law. The notice shall also specify the date that the Director will reconsider the eligibility of the building for REAP unless the Director is provided with proof of compliance prior to such date.

C. Findings. In determining whether a dwelling should be included in REAP, the Director shall find that each of the following factors exists:

1. The dwelling contains one or more untenable dwelling units as the result of the deficiencies noted in the citation or order; and

2. The landlord has refused or has consistently failed to correct the deficiencies.

D. Notice of Preliminary Acceptance. Within ten (10) business days of the acceptance by the Director of a building into REAP, the Director shall mail notification of the preliminary acceptance to all parties in interest, to SMUD, to PG&E, and to the occupants of each untenable rental dwelling unit, and any other person who has requested such notice in writing.

The notice of preliminary acceptance shall state that the dwelling, subject to the final approval of a Hearing Officer, has been accepted into REAP and shall state the following:

1. The street address of the dwelling;
2. A description of the uncorrected deficiencies;
3. Which dwelling units in the building are eligible for payment into the REAP escrow account;
4. The proposed date upon or after which an escrow account shall be established into which tenants of untenable rental dwelling units may deposit their rent in lieu of payment to the landlord;
5. That a nonrefundable administrative fee of Fifty and no/100<sup>ths</sup> (\$50.00) Dollars per participating dwelling unit per monthly rent payment shall be collected by the City from the escrow account;
6. The date, if no appeal is filed, on which the Hearing Officer will consider whether to approve the acceptance of the
7. The right of the landlord or other interested party to appeal the determination of the Director pursuant to the provisions of Article V of this chapter.

E. Hearing Officer Approval of Acceptance.

1. A Hearing Officer, by order, may accept a dwelling into REAP, adopting the determination of the Director where no appeal is filed, and finding that each of the factors set forth in subsection (C) of this section exists. The action of the Hearing Officer accepting a dwelling into REAP shall be final, except as provided in subsection (E)(2) of this section.

2. The Hearing Officer may, at any time, upon the application of the Director, rescind the order of acceptance if the Hearing Officer finds that the order is no longer necessary.



F. Notice of Acceptance. Within ten (10) business days of the acceptance by the Hearing Officer of a dwelling into REAP, the Director shall mail notification of the acceptance to the parties in interest.

The notice of acceptance shall state that the dwelling has been accepted into REAP and shall state the following:

1. The street address of the property;
2. A description of the uncorrected deficiencies;
3. Which rental dwelling units in the dwelling are eligible for payment into the REAP escrow account;
4. The date upon or after which an escrow account shall be established into which tenants of untenable rental dwelling units may deposit their rent in lieu of payment of the landlord; and
5. That a nonrefundable administrative fee of Fifty and no/100<sup>ths</sup> (\$50.00) Dollars per participating rental dwelling unit per monthly rent payment shall be collected by the City from the escrow account.

G. Service of Notices. The Notice of Preliminary Acceptance and the Notice of Acceptance shall be sent to each landlord and interested party both by certified mail, postage prepaid, return receipt requested, and by first class mail, postage prepaid, at the address or addresses of such person as it appears on the last equalized assessment roll of the City or as known to the Director. Service on other persons entitled to a notice may be sent by first class mail, postage prepaid. In addition, a copy of the Notice of Preliminary Acceptance or the Notice of Acceptance shall be posted in a conspicuous place upon the dwelling involved. The failure of any landlord or other person to receive such notice shall not affect in any manner the validity of any proceedings taken thereunder.

H. Declaration of Service. The Director, upon giving notices as provided in this section, shall make a declaration under penalty of perjury certifying to the date and manner in which such notice was given. Any receipt card which may have been returned to the Director in acknowledgment of the receipt of such notice by certified mail shall also be filed with the declaration.

I. Recording. At the time that the Director gives the notice described in subsection (D) of this section, the Director shall file and record with the Sacramento County Clerk-Recorder a certificate describing the real property and stating that the subject building has been placed in REAP and that the owner thereof has been so notified. After the building has been removed from REAP, the Director shall file and record with the

Sacramento County Clerk-Recorder a certificate terminating the above-recorded status of the subject building.

**16.20.1005 Application for release of funds.**

A. At any time during a dwelling's participation in REAP, a landlord, any interested party, a tenant, and any creditor, including any utility, contractor, or sub-contractor, whose debt arose from the purchase, repair, maintenance, or operation of the building may apply to the Director for a release of funds from the escrow account. The Director shall review such applications and, where the landlord concurs, may order the release of funds from the escrow account where it has been demonstrated to the satisfaction of the Director that such release is necessary to prevent a significant diminution of an essential service to the building, including utilities, or is necessary for the correction of the deficiencies noted. Where specifically ordered by a court, the Director shall order the release of funds from the escrow account irrespective of concurrence by the landlord.

B. The Director shall deny the application where he or she determines that the application for payment of the debt is intended, in whole or in part, to circumvent the provisions of this article. A debt incurred subsequent to notice to such creditor that the dwelling is under consideration for or had been selected for participation in REAP shall be presumed, subject to rebuttal, to be for the purpose of circumventing the provisions of this article.

C. At any time during a dwelling's participation in REAP, a tenant may apply to the Director for a release of funds from the escrow account for purposes described herein. The Director shall review such applications and, where the landlord concurs, or fails to object within a reasonable time as determined by the Director, may order the release of funds from the escrow account.

**16.20.1006 Duties of the Director.**

The Director shall have the following duties:

A. Determination of Interested Parties. In addition to any interested parties known to the Director, the list of interested parties shall include all persons appearing to hold an interest of record with the Sacramento County Clerk-Recorder concerning the subject property, of whatever type.

B. Contact with Tenants. The Director may contact the tenants of any dwelling during or after review. Such contact may be in person or by mail or both. The Director may contract with other persons or organizations to carry out this activity. During such contact, the tenants shall be informed of the principal provisions of REAP, of the

mechanism for voluntary payment into the escrow account by tenants of untenable rental dwelling units where the dwelling is accepted into REAP, and of their legal rights with respect to eviction under the provisions of this article.

The specific responses of tenants and any information in a form which is identifiable to any individual tenant shall not be a public record and shall not be disclosed to the landlord, any interested party, or the general public.

C. REAP Trust Fund. The Finance Director shall establish in the City Treasury and the Director shall maintain an interest-bearing REAP trust fund under the control of the Director in accordance with the provisions of this chapter.

#### **16.20.1007 Appeals.**

A. Appeal. The appeal provisions set forth in Article V of this chapter shall apply to all appeals taken under the REAP program. Failure to appeal in accordance with the provisions therein set forth shall constitute a waiver of any right to an administrative hearing and determination of the matter.

#### **16.20.1008 Escrow account.**

A. Within ten (10) business days after the order accepting a dwelling into REAP becomes final, the Director shall establish as part of the REAP trust fund an account for such dwelling into which tenants of untenable rental dwelling units of such dwelling may deposit rent payments. The Director shall mail notification to all such tenants of the existence of the account, including an explanation of how payments may be deposited into the account. The Director shall provide a receipt to each tenant making a deposit. The Director shall provide, at least once (1) a month, a periodic report to the landlord and the tenants concerning the activity in such account. The records of such account shall be reasonably available to the landlord or any interested party, or their representatives, in accordance with such regulations, including the provision for payment of reasonable fees, as the City Council from time to time may promulgate.

B. The gross amount of payment made into the account by or on behalf of a tenant shall be deemed as a payment in the same amount to the landlord, including, but not limited to, for the purpose of determining whether a tenant has paid rent. In any action by a landlord to recover possession of a dwelling unit, the tenant may raise the fact of payments into REAP as an affirmative defense in the same manner as if such payments had been made to and accepted by the landlord.

C. A landlord may bring an action to recover possession of a dwelling unit that has been accepted into the REAP program only upon one or more of the following grounds:

1. The tenant has failed to pay rent into REAP or to the landlord.

2. The tenant has violated a lawful obligation or covenant of the tenancy and failed to cure such violation after having received written notice thereof from the landlord.

3. The tenant is committing or permitting to exist a nuisance in, or is causing damage to, the dwelling unit or to the appurtenances thereof, or to the common areas of the complex containing the dwelling unit or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the same or any adjacent building.

4. The tenant is using or permitting a dwelling unit to be used for any illegal purpose. The term "illegal purpose" as used in this subsection includes, but is not limited to, the conviction of a tenant for possession or sale of illegal drugs from the dwelling units.

5. The tenant has refused the landlord reasonable entry pursuant to Section 1954 of the Civil Code.

D. Prior to or at the same time as the written notice of termination described in Section 1946 of the Civil Code, or the three (3) days' notice described in Sections 1161 and 1161a of the Code of Civil Procedure is served on the tenant of a dwelling unit, the landlord shall serve on the tenant a written notice setting forth the reasons for the termination with specific facts to permit a determination of the date, place, witnesses and circumstances concerning the reason. This notice shall be given in the manner prescribed by Section 1162 of the Code of Civil Procedure.

E. If the landlord is seeking to recover possession of a dwelling unit in retaliation against the tenant for exercising his or her rights under this article, or because of his or her complaint to an appropriate agency as to the tenantability of a dwelling unit, then the landlord may not recover possession of a dwelling unit in any action or proceeding or cause the tenant to quit involuntarily.

F. In any action by a landlord to recover possession of a dwelling unit, the tenant may raise as an affirmative defense any of the provisions set forth in subsections (B) through (E) of this section. Violation of subsections (B) through (E) of this section shall not constitute a misdemeanor.

G. The Clerk shall deduct a nonrefundable administrative fee of Fifty and no/100<sup>ths</sup> (\$50.00) Dollars for each individual rent payment made into the REAP account. Only one such fee shall be deducted for each rental dwelling unit for each month. When collected, such fee shall be deposited into the Housing Code Enforcement Fund.

H. The funds paid into the REAP escrow account shall only be expended on the following items:

1. The nonrefundable administrative fee provided under subsection (G) of this section.

2. Funds returned to the landlord where the landlord has provided the Director with proof of compliance that the deficiencies have been corrected.
3. Funds paid in accordance with a court order.
4. Funds paid to the landlord, an interested party, tenant, creditor, utility, or other person or entity pursuant to an order of the Director.
5. Funds paid in accordance with and pursuant to such regulations as the City Council may promulgate.

#### **16.20.1009 Removal from regulation.**

A. Request for Removal. The landlord or any interested party may apply to the Director for an order removing a dwelling from REAP on the grounds that the deficiencies noted in the citation or order have been corrected and that continued placement in REAP is not necessary to ensure continued compliance by the landlord with respect to required maintenance of the dwelling. A request to terminate the payment of rents into a REAP escrow account may be made at any time. A request to remove a building from regulation pursuant to this article may only be made after the expiration of twelve (12) months from the date the deficiencies noted in the citation of order were corrected.

B. Director's Decision. The Director shall review the request to remove a building from REAP, and take such other steps or actions as may to the Director seem appropriate under the circumstances to determine whether removal of the building from REAP is warranted. The Director shall issue an order granting or denying the request within thirty (30) days of its receipt. A copy of the Director's order shall be served upon all interested parties by mail. The order of the Director shall be appealable under those provisions as set forth in Article V of this chapter. The landlord shall be bound by the determination of the Director as to the existence or correction of deficiencies.

C. Notice of Removal. Once the order to remove a dwelling from the REAP program has become final, notice thereof shall be given to all interested parties by the Clerk in the same manner as for service of notice of eligibility as set forth in this article.

D. Closing REAP Trust Account. Once the order removing a dwelling from REAP has become final, and after all claims against the REAP trust account have been settled, the remaining balance, including interest, if any, shall be disbursed to the party entitled to receive same and the REAP trust account shall be closed.

#### **16.20.1010 Disallowance of rent increases.**

The landlord shall not increase the rent for any rental dwelling unit included in REAP during such time as the dwelling unit or units remain in the REAP program, except that,

for a dwelling unit which is voluntarily vacated by all of the tenants after all of the deficiencies noted in the citation or order have been corrected, the landlord may increase the rent to any amount upon re-rental of the dwelling unit.

## **Article XI. Rental Housing Enforcement Fees\***

\* The following constitute the fees payable to the Director by the owner of a building covered by this chapter.

### **16.20.1100 Reinspection fee.**

Following issuance of a notice and order for a violation of the provisions of this chapter, upon reinspection of a dwelling to determine whether corrective action has been satisfactorily completed, and upon a determination that corrective action has been successfully completed by the time of such reinspection, there shall be a reinspection fee levied against the owner(s) in the amount of Two Hundred Fifty-Three and no/100<sup>ths</sup> (\$253.00) Dollars. There shall be no reinspection fee charged for an inspection caused by any complaint if no violation is discovered.

### **16.20.1105 Notice and order fee.**

Where a violation continues to exist following the first reinspection as provided herein, there shall be a notice and order fee levied against the owner(s) in the amount of Five Hundred Ten and no/100<sup>ths</sup> (\$510.00) Dollars. Reinspections occurring thereafter to determine whether corrective action has been satisfactorily completed shall be charged to the owner(s) in the amount of the reinspection fee described above for each subsequent inspection required to determine compliance with this chapter.

### **16.20.1110 Building permit fee.**

Where issuance of a building permit is required under the building code in order to complete work required by a notice and order which has been issued under this chapter, such permit shall be obtained from the Director, and the fee therefor shall be paid to the Director in the same amount as would be applicable under the fee schedule for building permits then in use by the Public Works Department of the City.

### **16.20.1115 Building permit surcharge.**

Where a building permit is required under the building code to complete work required by a notice and order issued under this chapter, there shall be imposed, in addition to the building permit fee, a building permit surcharge of Seventy-Eight and no/100<sup>ths</sup> (\$78.00) Dollars.

**16.20.1120 Hourly rate.**

Where the Director finds that additional costs of enforcement are not otherwise recovered by the fees levied by this chapter in association with a dwelling found to constitute a violation, the additional costs of enforcement shall be levied at the hourly rate of Two Hundred Fifty-Three and no/100<sup>ths</sup> (\$253.00) Dollars, rounded to the nearest hour for each City official involved.

**16.20.1125 Contract administration fee.**

For all private contracts entered by the Director for work authorized under this chapter, in addition to the contract price there shall also be authorized as an additional cost of enforcement charged to the owner(s) fifteen (15%) percent of the contract price as a contract administration fee.

**16.20.1130 Small claims collection fee.**

For any amounts due and unpaid, and which are referred to the Finance Department for collection under this chapter, a fee of One Hundred Fifty and no/100<sup>ths</sup> (\$150.00) Dollars shall be levied to cover costs of small claims court filing and administration.

**16.20.1135 Appeal fee.**

The fee for all appeals taken under this chapter shall be One Hundred Fifty and no/100<sup>ths</sup> (\$150.00) Dollars.

**16.20.1140 Late fee.**

If a fee has not been received by the date upon which it is due under this chapter there shall be imposed a late fee of twenty-five (25%) percent per annum of the fee.

**16.20.1145 Notice fee.**

The owner may be charged for the City's postage or mileage costs for sending or posting notices required to be given pursuant to this chapter.

**16.20.1150 Closing fee.**

In every instance in which a notice and order is issued and served there shall be a fee of Two Hundred Fifty-Three and no/100<sup>ths</sup> (\$253.00) Dollars charged to cover costs of administration and completion of the documentation associated with concluding the enforcement activity. This fee shall be levied at the conclusion of the case.

## **Chapter 16.21**

### **CITY OF ELK GROVE HOTEL/MOTEL COMPLIANCE ASSURANCE PROGRAM**

#### Sections:

16.21.010 Title.

16.21.020 Purpose.

16.21.030 Application.

16.21.040 Definitions.

16.21.050 Authority to enter and inspect.

16.21.060 Inspections.

#### **16.21.010 Title.**

This chapter shall be known as the “City of Elk Grove Hotel/Motel Compliance Assurance Program,” and may be cited as such.

#### **16.21.020 Purpose.**

A. It is the intent of the City Council in adopting this chapter to establish a compliance assurance program providing for periodic inspections of all hotels and motels in the City of Elk Grove for violations of the State Housing Law (Section 17910 et seq. of the Health and Safety Code), the City of Elk Grove housing code (EGMC Chapter 16.20), and the City of Elk Grove dangerous buildings code (EGMC Chapter 16.22). The City Council finds that it is important to identify violations at hotel and motel establishments and refer the violations to the City of Elk Grove Planning Department or other local code enforcement programs for potential enforcement action before they escalate into blighted properties.

B. The provisions of this chapter are to be supplementary, cumulative, and complementary to all of the provisions of this code, state law, federal law, and any law cognizable at common law, or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City of Elk Grove to inspect hotels and motels for violations of the state housing law, the City of Elk Grove housing code, or the City of Elk Grove dangerous buildings code or to take any enforcement action related thereto.



### **16.21.030 Application.**

The provisions of this chapter shall apply generally to all new and existing hotels and motels located in the City.

### **16.21.040 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

- A. "Department" means the Planning Department of the City of Elk Grove.
- B. "Director" means the Planning Director of the Planning Department of the City of Elk Grove or his or her designated representatives.
- C. "Hotel/motel" means any building or structure containing five (5) or more rooms intended or designated to be used, or which are used, rented, or hired out to be occupied or which are occupied for sleeping purposes by guests. Rent may be paid in money, goods, or services.

### **16.21.050 Authority to enter and inspect.**

A. Inspections. To the extent authorized by law, the Director may enter any hotel/motel at reasonable times to make inspections authorized by local ordinance or state law. The Director is authorized to make such inspections as may be necessary or appropriate to enforce the provisions of this code, including, without limitation, inspection of all buildings, structures or premises within the scope of this code.

B. Right of Entry. The Director may enter the hotel/motel at reasonable times to perform inspections provided for in this chapter, provided that credentials be presented to the management of the hotel/motel and entry requested. If entry is refused, the Director shall have recourse to all remedies provided by law to secure entry, including without limitation the provisions of Section 1822.50 et seq. of the Code of Civil Procedure relating to inspection warrants. The Director shall not enter any hotel/motel pursuant to this section between the hours of 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, without the consent of the management of the hotel/motel, and shall not enter any hotel/motel in the absence of management without a proper written order executed and issued by a court of competent jurisdiction.

### **16.21.060 Inspections.**

A. The Director shall conduct periodic inspections of all hotels/motels located in the City for violations of the State Housing Law (Section 17910 et seq. of the Health and Safety Code and Title 25, Chapter 1, of the California Code of Regulations), the City of Elk Grove housing code (EGMC Chapter 16.20), and the City of Elk Grove dangerous buildings code (EGMC Chapter 16.22). The inspectors shall complete an inspection

report for each facility inspected and provide a copy of the report to the facility's manager or other local code enforcement programs.

B. All exterior and public areas may be inspected, including, without limitation, hallways, laundries, lobbies, dining areas, fire extinguishers, and trash collection areas.

C. All kitchen and food preparation areas may be inspected.

D. A sufficient number of guest rooms chosen at random shall be inspected so that the inspector may determine that a substandard housing condition or public health nuisance either is or is not likely to be in existence.

E. In the event that any violation or violations of the State Housing Code, the City of Elk Grove housing code, or the City of Elk Grove dangerous buildings code are discovered during any inspection, the violation(s) shall be noted on the inspection report and shall state that the matter is being referred to the local code enforcement program for appropriate enforcement action. A referral will be made to the local enforcement programs for enforcement action if the inspection reveals:

1. Violation(s) of imminent danger to the public health or safety. Imminent danger to the public health or safety includes, but is not limited to, exposed hazardous or unsafe electrical wiring, surfacing sewage discharge, unsafe water supply, and rodent and/or insect infestation.

2. A substantial number of general maintenance violations. General maintenance violations include, but are not limited to, deteriorated interior floors, walls, and ceiling, lack of paint or protective weather covering, broken windows or doors, and accumulation of junk and/or other debris.

## **CHAPTER 16.22**

### **ELK GROVE CITY DANGEROUS BUILDINGS CODE**

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## **Article I**

### **General Provisions**

#### **16.22.100 Title.**

This chapter shall be known as the "Elk Grove City Dangerous Buildings Code."

#### **16.22.101 Purpose.**

A. It is the intent of the Elk Grove City Council in adopting this code to provide a comprehensive method for the identification and abatement of certain public nuisances within the City limits, and to assess any costs of abatement thereof against the owners of the premises, either as a personal obligation or as a lien against the subject property.

B. The provisions of this code are to be supplementary, cumulative and complementary to all of the provisions of the Elk Grove City Code, State Law, and any law cognizable at common law, or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City of Elk Grove to abate any and all nuisances.

C. The provisions of this code are enacted for the protection of life, limb, health, safety, property, or welfare of occupants of and neighbors to dangerous buildings and the general public, and may require that the dangerous building be repaired or demolished, at the owner's expense, and that the building be vacated and entry be denied until the dangerous condition is no longer present.

#### **16.22.102 Application.**

The provisions of this code shall apply generally to all property within the Elk Grove City limits.

## **Article II**

### **Administration and Enforcement**

#### **16.22.200 Administration.**

The Building Official is to administer and enforce the provisions of this code. As used herein, the term "Building Official" shall include the designated representative of the Building Official.

#### **16.22.201 Regulations.**

The Building Official is authorized to adopt and enforce reasonable regulations consistent with the purposes, intent, and express terms of this code as he or she deems necessary to implement such purposes, intent, and express terms.

#### **16.22.202 Filing Regulations with Clerk.**

No regulation, or amendments thereto, shall be enforced or become effective until thirty (30) days following the date on which the proposed regulation or amendment has been filed with the City Clerk.

#### **16.22.203 Authority to Enter and Inspect.**

A. Inspections. To the extent authorized by law, the Building Official may enter any premises at reasonable times to make inspections authorized by this code or State law. The Building Official is authorized to make such inspections and to take such actions as may be necessary or appropriate to enforce the provisions of this code, including, without limitation, inspection of all buildings, structures or premises within the scope of this code, and all construction or work for which a permit is required in accordance with the Building Code.

B. Right of Entry. Whenever it is necessary to make an inspection to enforce the provisions of this code, or when the Building Official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous or hazardous, the Building Official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises is occupied that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry. No person shall

enter any building or premises pursuant to this section between the hours of 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, without the consent of the owner or the occupants of the building or premises, and shall not enter any building or premises in the absence of the occupants without a proper written order executed and issued by a court of competent jurisdiction.

#### **16.22.204 Responsibility for Proper Maintenance.**

A. Owner. Every owner of real property within the City limits is required to maintain such property in a manner so as to not violate the provisions of this code, and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property.

B. Occupant or Lessee. Every occupant, lessee or holder of any interest in property other than an owner thereof or lender whose sole interest therein is as security for the repayment of a debt, is required to maintain such property in the same manner as is required of the owner thereof, and the owner thereof, and the duty imposed by this section on the owner thereof, shall in no instance relieve those persons herein referred to from the similar duty.

#### **16.22.205 Hearing Officer.**

Reference to the term "Hearing Officer" in this Chapter shall be interpreted to mean "Appeals Hearing Officer" as the term is used in EGMC Chapter 1.11. An Appeals Hearing Officer shall hear issues and appeals brought by the department head under the provisions of this chapter.

#### **16.22.206 Abatement of Dangerous Buildings.**

All buildings, structures, or portions thereof, and premises which are determined after inspection to be dangerous as defined in this code, are hereby declared to be public nuisances, and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this code, or in any other manner authorized by law or in equity.

#### **16.22.207 Violations.**

A. All buildings, structures, and premises are to be maintained so as not to pose a threat to the health and safety of any person or persons. It shall be unlawful and a violation of this code for any person whether as owner, lessee, sublessor, sublessee or occupant of any building, structure or premises to maintain or allow such building, structure or premises to become a dangerous building. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

B. It shall be unlawful and a violation of this Code for any person, whether as owner, lessee, sublessor, sublessee or occupant of any premises, to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy, maintain, or cause or permit the same to be done, to any building, structure, or premises, or portion thereof, in violation of this code. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

### **Article III**

#### **Definitions**

##### **16.22.300 Definitions.**

For the purposes of this code, the following words shall have the following specified meanings:

A. Building Code. Building Code means the Uniform Building Code as adopted and amended by EGMC Chapter 16.04, as may be amended from time to time.

B. Dangerous Building. Dangerous Building means any building, structure or premises deemed to be dangerous under the provisions of EGMC Section 16.22.301.

C. Building Official. Building Official means the Building Official of the Building Safety and Inspection Department of the City of Elk Grove, or his or her authorized representative.

D. Housing Code. Housing Code means EGMC Chapter 16.20, as may be amended from time to time.

E. Owner. Owner means all persons, firms, businesses, partnerships, and corporations who own a fee interest of public record in real property subject to this code.

F. Party in Interest. Party in interest means all persons, firms, businesses, partnerships, and corporations who have a lease, sublease, easement, mortgage, or other interest of public record, in real property, a building, structure, or premises subject to this code.

G. Person. Person means any natural person, firm, partnership or corporation.

H. Premises. Premises mean any real property, including any and all buildings, structures and improvements thereon, as the case may be.

### **16.22.301 Dangerous Building.**

For the purpose of this code, any building, structure or premises which has any of the conditions or defects hereinafter described, shall be deemed to be a dangerous building, provided that such condition or defect endangers or may endanger the life, health, property, safety or welfare of the occupants of such building, structure or premises, adjoining property owners or their occupants, or the public:

A. Whenever any door, aisle, passage way, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or other emergency.

B. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or other emergency.

C. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

D. Whenever any portion thereof has been damaged by fire, earthquake, wind, and flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such event and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

E. Whenever any portion, member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

F. Whenever any portion thereof, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half (0.5) of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

G. Whenever any portion thereof has racked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of new buildings of similar structure, purpose or location.

H. Whenever the building or structure, or any portion thereof, because of: 1) dilapidation, deterioration or decay; 2) faulty construction; 3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such



building or structure; 4) the deterioration, decay or inadequacy of its foundation; or 5) any other cause, is likely to partially or completely collapse.

I. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

J. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third (0.33) of the base.

K. Whenever the building or structure, exclusive of the foundation, shows thirty-three (33%) percent or more damage or deterioration of its supporting member or members, or fifty (50%) percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

L. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or by any other such cause, or has become so dilapidated or deteriorated as to become: 1) an attractive nuisance to children; 2) a harbor for vagrants; or 3) a harbor for persons to commit unlawful acts.

M. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or any other law of this state or jurisdiction relating to the condition, location or structure of buildings.

N. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than fifty (50%) percent, or in any supporting part, member or portion less than sixty-six (66%) percent of the: 1) strength, 2) fire-resisting qualities or characteristics, or 3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

O. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Building Official to be unsanitary, unfit for human habitation or in such condition that it is likely to cause sickness or disease.

P. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Chief to be a fire hazard.

Q. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof as a public nuisance or hazard to the public.

R. Whenever any building or portion thereof is so deteriorated, damaged, in such need of repair or is left vacant and unsecured so as to present a threat to the health, safety and welfare of the community and constitutes a nuisance.

## **Article IV**

### **Abatement Procedure**

#### **16.22.400 Abatement.**

Upon a determination by the Building Official, following an inspection of the building, structure or premises, that a dangerous building is present, the Building Official may commence summary or administrative process to abate the nuisance, as provided herein, or may commence abatement in any other manner or process provided by law or in equity.

#### **16.22.401 Recording Certificate of Nuisance/Abatement.**

A. Upon a determination by the Building Official, following an inspection of the premises, that a dangerous building is present, the Building Official shall cause a notice of pending enforcement action to be recorded in the office of the Sacramento County Clerk-Recorder by the City of Elk Grove. The notice of pending enforcement action shall contain statements providing the following information regarding the premises: 1) a sufficient description to identify the subject property, 2) certify that the Building Official has determined that the property is the site of a dangerous building and is a public nuisance, and 3) that the owner has been so notified.

B. When the enforcement action has been fully resolved and all costs associated therewith finally settled, a certificate of abatement shall be issued to the owner of the subject property who may record same, at the owner's expense, in the office of the Sacramento County Clerk-Recorder. The certificate of abatement shall state the following regarding the premises: 1) a sufficient description to identify the subject property, 2) reference to the earlier recorded notice of pending enforcement action, and 3) certify that the premises is no longer the site of a dangerous building, that the nuisance has been abated, and that the property is no longer subject to a pending enforcement action.

C. The notice of pending enforcement action shall be given constructive notice effect from the date it is recorded.

#### **16.22.402 Summary Abatement.**

A. If a dangerous building is found to exist, and in the reasonable discretion of the Building Official, such dangerous building is determined to be imminently dangerous to the health, safety or welfare of the public, the occupants, or the neighbors of such premises, the same may be abated forthwith by the City without compliance with the provisions of this code requiring advance notice and an opportunity for a hearing. A written finding shall be executed by the Building Official which shall set forth in concise language reasons in support for the determination that a dangerous building is imminently dangerous. The written finding need not be exhaustive in specifying violations noted and factors considered in reaching the determination. For purposes of this section "imminently dangerous" shall mean that the condition of the dangerous building, if abated according to the procedures set forth in this code requiring notice and an opportunity for a hearing, may, during the pendency of those proceedings, subject the public, occupants, or neighbors, or the property of such, to potential harm of a serious nature.

B. Having made such a determination to conduct summary abatement, the Building Official is authorized to take all actions which are reasonable and necessary to abate the nuisance for the protection and welfare of the public, including demolition of the premises.

C. Occupants, if any, of such building, structure or premises, may be ordered by the Building Official, or a peace officer acting pursuant to the request of the Building Official, to vacate without requiring advance notice and an opportunity for a hearing. Such order to vacate shall be in writing signed by the Building Official. It shall be unlawful to fail to obey such order to vacate.

D. Notwithstanding the above provisions, a reasonable effort shall be made by the Building Official to notify the owner of the premises in advance of such summary abatement. No such notice shall be required if the Building Official determines that there is good cause to forego giving such notice. For purposes of this section "good cause" includes, but is not limited to, when the owner is unavailable or is avoiding service of process.

E. In reviewing the Building Official's decision that an imminently dangerous building was present, and in reviewing the actions taken by the City in conducting summary abatement thereof, the court shall presume that the Building Official's decision was properly made and that the City's actions were lawful, reasonable and appropriate.

F. The cost of summary abatement of the nuisance, including all costs incurred by the City in conducting the abatement, all administrative costs of any enforcement action taken under this code, and all relocation benefits required to be paid by the City, if any, may be assessed against the owner or made a lien against the premises as provided in Article V of this code; except, that in the event a court of competent jurisdiction decides the action taken under this section was improper, no lien shall be assessed.

G. Attorneys' Fees. Pursuant to Government Code section 25845, attorneys' fees may be recovered by the prevailing party. However, in no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

#### **16.22.403 Administrative Abatement.**

If a dangerous building is found to exist on any premises, the Building Official may initiate administrative abatement proceedings as set forth in this code. Generally, the administrative abatement process shall consist of giving advance notice to the owner and all interested parties of the violation of this code and afford an opportunity for a hearing on the issues involved prior to the abatement of the nuisance by the City.

#### **16.22.404 Notice and Order.**

A. Contents. To initiate the administrative abatement process, the Building Official shall issue a written notice and order directed to the owner of the premises and all parties in interest. The notice and order shall contain the following:

1. Description of Premises. The street address, assessor's parcel number or such other descriptive information as is reasonably available to sufficiently identify the premises on which the building or structure is located.

2. Violation(s) Noted. A concise factual statement specifying the conditions which constitute the violation(s) resulting in the premises being declared by the Building Official to be a dangerous building and a public nuisance as defined by this code.

3. Notice to Appear and Show Cause. A notice to the owner and all parties in interest to appear before a Hearing Officer from the Office of City Hearing Officer, at a set date, time and location, but in no event less than twenty (20) days after having mailed such notice, to show cause why the premises should not be declared a public nuisance and the same ordered abated by the owner, or by the City at the owner's expense. If the Building Official has determined that occupants must vacate the premises, the notice to appear shall also require that the owners and all parties in interest show cause why vacation of the premises should not be ordered and the premises secured by the City at the owner's expense. The notice shall state that

conduct of the hearing will be pursuant to the provisions set forth in Government Code section 11513 (a), (b) and (c). The owner and any party in interest may appear at the hearing and offer evidence in this matter.

4. **Voluntary Abatement Option.** A statement advising the owner and all parties in interest that they have the option of voluntarily abating the nuisance prior to the date set for hearing by either repair or demolition of the premises. The owner and/or the parties in interest must advise the Building Official in writing that they will abate the nuisance, and the date of scheduled completion thereof. The Building Official will inspect the premises on the scheduled completion date, and if the nuisance has been abated, the hearing will be taken off the calendar. If the owner and/or the parties in interest choose voluntary abatement, such abatement must be completed in accordance with all applicable City codes, including issuance of and inspection pursuant to required permits. Voluntary abatement must be completed prior to the hearing date or any extension thereof granted by the Hearing Officer. The owner, any party in interest or the City may request a continuance of the hearing pursuant to EGMC Section 16.22.408.

5. **Failure to Appear.** A statement advising the owner and all parties in interest that their failure to appear at the administrative abatement hearing waives any right to an administrative hearing, a determination of this matter and their right to appeal the determination of this matter.

6. **Scope of Hearing.** A statement that the Building Official may offer evidence in support of the existence of the following conditions concerning the subject property: i) A dangerous building or structure exists on the property, ii) The repairs or demolition required to correct the violations have not been accomplished, and iii) Tenants or occupants, if any, must be ordered to vacate.

7. **Possible Orders.** A statement that if the Hearing Officer finds by a preponderance of the evidence that the above described conditions exist concerning the premises the Hearing Officer may then order that the City may directly or by contract, and without further notice or consent of the owners or any party in interest:

a. **Repair.** Repair the premises in a manner appropriate under the circumstances; or

b. **Demolish.** Demolish the premises in a manner appropriate under the circumstances if the Hearing Officer also finds by a preponderance of the evidence that it is not economically feasible to repair the premises; and

c. **Vacation.** Vacate the premises in a manner appropriate under the circumstances if the Hearing Officer also finds by a preponderance of the evidence that occupants of the

premises are or will be endangered by the condition of the premises or the abatement enforcement actions.

For the purpose of this section "not economically feasible to repair" means that the reasonable estimated cost of repair exceeds fifty (50%) percent or more of the as-is appraised value of the premises, as determined by persons qualified to estimate repair costs and appraised value, with concurrence of the Building Official.

8. Owner Responsible for Costs. A statement advising that the owner may be held personally liable for payment of all costs incurred by the City in any administrative enforcement action, including, but not necessarily limited to, fees and costs of investigation, administration, technical consultants, hearings, permits, inspections, City-performed abatement activities or those abatement activities performed by third-parties at the City's request, and collection. Additionally, the premises may be subject to a special assessment lien to recover all such costs pursuant to Article V of this code concerning recovery of costs.

B. Service. The notice and order, and any amended or supplemental notice, shall be served either by personal delivery or by mailing a copy by certified mail, postage prepaid, return receipt requested, upon the owner of record at his or her/their address as it appears on the latest equalized assessment roll of Sacramento County, or as known to the Building Official, and upon all parties in interest as their addresses may appear on the instrument of public record creating their interest in the premises. If no address appears on the instrument of public record creating their interest in the premises, then a party in interest may be served as described above, by certified mail addressed to the party in interest in care of the owner. A copy of the notice shall be posted on the premises. The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her by the provisions of this code. The failure of any person to receive such notice shall not affect the validity of any proceedings taken under this code. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

C. Proof of Service. Proof of service shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the identify, time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice retained by the Building Official. Proof of posting a copy of the notice shall be certified by written declaration under penalty of perjury executed by the person effecting posting and declaring the time, date and location posting was effected.

#### **16.22.405 Warning Sign.**

A. If a dangerous building is found to exist on any premises, the Building Official may post a warning sign on or near the premises advising the public that the building has been found to be a dangerous building and that entry is unsafe. The Building Official's failure to post a warning sign is not to be construed as any determination on this matter whatsoever, and posting a warning sign is advisory only. It shall be unlawful and a violation of this code for any person to remove or destroy a warning sign posted pursuant to this code without the prior written permission of the Building Official. Any warning sign posted upon a premises shall be in substantially the following form:

**DO NOT ENTER**

**UNSAFE TO ENTER OR OCCUPY**

The City of Elk Grove has found this building to be dangerous.

EGMC Chapter 16.22.

It is a misdemeanor to enter or occupy this building, to remove boards, and/or to remove or deface this notice.

Building Official

Building Safety and Inspection

Development Services

City of Elk Grove

B. Securing. Whenever the Building Official determines that a Dangerous Building constitutes an immediate threat to the public health or safety, the Building Official may board up the structure in accordance with the provisions in EGMC Chapter 16.23. No person shall remove or deface any such boards placed by the Building Official without the prior written permission of the Building Official. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

**16.22.406 Administrative Hearings -- Generally.**

At the time set for hearing, the Hearing Officer shall proceed to hear the testimony of the Building Official, the owner, and other competent persons respecting the condition of the premises, and other relevant facts concerning the matter. The Hearing Officer shall follow the rules of procedure for conducting hearings established by this code and shall render all decisions and findings in writing which shall then be served on all parties as herein provided.

#### **16.22.407 Record of Oral Evidence at Hearing.**

The proceedings at the hearing may be reported by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense. It shall be the responsibility of the Hearing Officer to certify the record of the hearing.

#### **16.22.408 Continuances.**

The Hearing Officer may, upon request of the owner, a party in interest, or the Building Official, grant continuances from time to time for good cause shown, or upon his or her own motion. Any continuance granted shall in no way diminish the responsibility of the owner and/or parties in interest for maintaining the premises, nor affect other requirements of this code regarding time for challenging any decisions made or actions taken.

#### **16.22.409 Oaths; Certification.**

The Hearing Officer or certified shorthand reporter shall administer the oath or affirmation.

#### **16.22.410 Evidence Rules.**

Government Code of the State of California, Section 11513, Subsections (a), (b) and (c), as presently written, or hereinafter amended, shall apply to hearings conducted under this code.

#### **16.22.411 Rights of Parties.**

Each party may represent themselves, or be represented by anyone of their choice. Each party may appear at the hearing and offer evidence in this matter and cross examine witnesses.

#### **16.22.412 Official Notice.**

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.

#### **16.22.413 Inspection of Premises.**

The Hearing Officer may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

A. Notice of such inspection shall be given to the parties before the inspection is made;



B. The parties are given an opportunity to be present during the inspection; and

C. The Hearing Officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.

D. Each party then shall have a right to rebut or explain the matters so stated by the Hearing Officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

**16.22.414 Form and Contents of Decision; Finality of Decision.**

A. Form. The decision of the Hearing Officer shall be in writing, shall contain findings of fact and a determination of the issues presented, and shall be issued no later than thirty (30) days from the date of the hearing, unless the time is waived by the parties. If it is shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance the decision shall require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the Hearing Officer, or in the alternative, within the time designated by the Building Official. If the building, structure or premises is lawfully occupied, and abatement of the nuisance may not be safely accomplished under the circumstances as a result of such occupancy, the occupants may be ordered to vacate the premises under terms reasonable under the circumstances presented. The Hearing Officer may order such remedies as are reasonable under the circumstances for the protection of the public or affected property, and as are otherwise authorized by law or in equity, including the following. The owner may be responsible for satisfying all relocation benefits, as may be required by law. The premises may be ordered fenced and boarded against entry. Regular patrol of the premises to ensure the integrity of such boarding and fencing measures may be ordered. (It is not the intent of this code to allow boarding and fencing of premises to substitute for abatement of the public nuisance; such actions are to be merely interim measures, lasting only so long as is necessary to protect the public and property until full abatement may be accomplished.) The Hearing Officer may order other measures which are reasonable and necessary for the protection of the public or property under the circumstances. The Hearing Officer's decision shall inform the owner that if the nuisance is not abated within the time and in the manner specified, the nuisance may be abated by the City, without further notice or consent of the owner or any party in interest, in such manner as may be ordered by the Hearing Officer, and the expense thereof, including all costs of enforcement, and relocation benefits required to

be paid by the City as a result of the owner's failure to do so, may be made a lien on the subject property.

B. Time for Challenging Decision. The decision shall also inform the parties that the time within which one must file a challenge to the decision is governed by EGMC Chapter 1.06, as the same may be amended from time to time.

C. Decision Final. The decision of the Hearing Officer shall be final when signed and issued by the Hearing Officer and served as herein provided in EGMC Section 16.22.415.

**16.22.415 Service of the Hearing Officer's Decision.**

Upon issuance of the hearing officer's decision, the Building Official shall serve a copy on the owner and all parties in interest in the same manner as set forth in EGMC Section 16.22.404(B) and shall post a copy thereof conspicuously on the premises involved. Proof of service and posting of the hearing officer's decision shall be effected in the same manner as set forth in section EGMC 16.22.404.c.

**16.22.416 Challenge to Decision of Hearing Officer.**

Any challenge to the decision of the Hearing Officer and preparation of a record of the administrative proceeding shall be governed by the provisions of EGMC Chapter 1.06.

**16.22.417 Notice to Vacate.**

A. If ordered by the Hearing Officer, the Building Official shall serve a notice to vacate concerning the premises in the manner set forth in EGMC Section 16.22.404(B), and proof of service and posting of the notice to vacate shall be effected in the same manner as set forth in section EGMC Section 16.22.404(B). It shall be unlawful and a violation of this code for any person to remain in or enter a building which has been posted by the Building Official with such a notice to vacate except that entry may be made to repair, demolish or remove such building under permit. It shall be unlawful and a violation of this code for any person to remove, deface or destroy a notice to vacate posted by the Building Official pursuant to this section without the prior written permission of the Building Official. Any notice to vacate shall be in substantially the following form:

**DO NOT ENTER**

**UNSAFE TO ENTER OR OCCUPY**

The City of Elk Grove has found this building to be dangerous.

EGMC Chapter 16.22.

It is a misdemeanor to enter or occupy this building, to remove boards, and/or to remove or deface this notice.

Building Official

Building Safety and Inspection

Development Services

City of Elk Grove

B. Securing. Whenever the Building Official determines that a Dangerous Building constitutes an immediate threat to the public health or safety, the Building Official may secure the structure in accordance with the provisions in EGMC Chapter 16.23. No person shall remove or deface any board or fence used to secure the property without the prior written permission of the Building Official. Any person violating this subsection may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

**16.22.418 Interference with Repair or Demolition Work Prohibited.**

No person shall obstruct, impede, or interfere with any officer, employee, contractor or authorized City representative or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this code; or with any person to whom such building has been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or City authorized representative, person having an estate or interest in such building, or purchaser is engaged in the work of repairing, vacating, or demolishing any such building or portion thereof pursuant to the provisions of this code or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

**16.22.419 Performance of Work or Repair or Demolition.**

A. Procedure. When any work of repair or demolition is to be done by the City pursuant to order of the Hearing Officer, the Building Official shall issue a work order therefore and the work shall be accomplished by personnel of this jurisdiction, or by private contract under the direction of the Building Official. If any part of the work is to be accomplished by private contract, standard Public Works Department contractual practices shall be followed. Plans and specifications therefore may be prepared by the Building Official, or the Building Official may employ such architectural, engineering and other assistance on a contract basis as deemed reasonably necessary to accomplish the required tasks.

B. Costs. The cost of such work may be made a personal obligation of the property owner, or may be made a special assessment lien against the property involved, whichever the City Council shall determine is appropriate under the procedure herein described in Article V concerning recovery of costs.

## **Article V**

### **Recovery of Cost of Abatement**

#### **16.22.500 Costs of Abatement-Confirmation.**

A. Costs. When proceedings under this code result in the correction of a violation of this code or in a final judgment that a violation exists subsequent to the date specified in any notice issued pursuant to the provisions of Elk Grove Municipal Code, all costs of such proceedings and abatement incurred by the City may be assessed against the property. Such costs may include, but not by way of limitation, those incurred in inspecting property, publication, mailing and posting of notices, conducting hearings, processing and defending challenges to decisions or actions and pursuing any judicial action. It is the purpose of this section to allow the assessment against property of costs of proceedings if a violation is corrected in any manner.

B. Attorneys' Fees. Pursuant to Government Code section 25845, attorneys' fees may be recovered by the prevailing party. However, in no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

C. Accounting of Abatement Costs. The Building Official shall keep an account of the administrative and other costs of abatement, and shall submit to the City Council for confirmation an itemized written report showing such costs and their proposed assessment to the respective properties. The report shall be filed with the City Clerk not later than fifteen (15 days in advance of the confirmation hearing required below.

D. Clerk to Schedule Public Hearing to Confirm Report of Costs. Upon receipt of the report of costs, the City Clerk shall schedule a public hearing to receive protests and confirm the report.

E. Notice of Public Hearing to Confirm Report of Costs. Notice of the time, date and place of the hearing proposed assessment, together with reference to the report on file with the Clerk, shall be given to the 1) owner or owners as shown on the last equalized assessment roll available on the date of mailing of the notice, and to 2) each party in interest of each parcel of property proposed to be assessed.

F. Time for Giving Notice. Such notice shall be served not later than fifteen (15) days in advance of the hearing.

G. Service of Notice.

1. Owner. Notice to the owner or owners of each property proposed to be assessed, shall be served by mail addressed to the owner at the address shown on the last equalized assessment roll, or any other address or addresses ascertained to be more accurate. If no address or owner is shown on the last equalized assessment roll, then notice shall be given by publication in a paper of general circulation within the City. Notice shall also be posted on the property. The notice published in a newspaper of general circulation shall show the name or names of the owner or owners if known, the assessor's parcel number, the street address of the property, if the property has an address and the address is known to the Building Official, the name of the street or road upon which such property abuts, if the property abuts upon a street or road, the amount of the proposed assessment and reference to the report of costs on file with the Clerk. Such publication shall be made not later than fifteen (15) days in advance of the hearing.

2. Party in interest. Notice to each party in interest of each property proposed to be assessed, shall be served by mail addressed to the party in interest at the address shown on the instrument of record creating such interest in the property, or any other address or addresses ascertained to be more accurate. If no address for such party in interest is known, then notice shall be given by publication in a paper of general circulation within the City. The notice published in a newspaper of general circulation shall conform to the requirements set forth in EGMC Section 16.22.500(F)(1).

3. Public. Notice of the time, date and place of the public hearing by the City Council shall be published once in a newspaper of general circulation published within the City. Such publication shall be made not later than fifteen (15) days in advance of the hearing.

Service Effective. Service shall be complete and effective as of the date of mailing or publication, as may be appropriate, as herein provided. The failure of any person to receive such notice shall not affect the validity of any proceedings taken pursuant to this section.

H. Proof of Service. Proof of service by mail shall be effected in the manner set forth in EGMC Section 16.22.403(B) Proof of service by publication shall be certified by written declaration under penalty of perjury executed by the person authorized to do so by the newspaper of general circulation declaring the date the notice was published by a newspaper of general circulation within the City, and a copy of the published notice shall be affixed to such declaration.

I. Protests. Protest or objection to all or part of the report of costs may be in writing or may be given orally at the hearing for confirmation of the report of costs. Written protests or objections to all or part of the report of costs shall specify the hearing date, hour and description of the subject property.

J. Public Hearing by City Council; Confirmation of Costs. Upon the day and hour fixed in the notice the City Council shall conduct a public hearing to consider and pass upon the report of costs, together with any such protests or objections thereto. The City Council may make such revision, correction or modification of the report or the charge as it may deem just; and in the event the City Council is satisfied with correctness of the charge, the report (as submitted or as revised, corrected or modified) shall be confirmed or rejected by motion or resolution. The City Council may continue the hearing and delegate to the City Manager, or his designee, the responsibility of hearing individual protests and objections, and submitting a recommendation with respect thereto; provided, that the City Council provides an opportunity for individual consideration of each protest or objection upon receipt of the recommendation by the City Manager or his designee. The decision of the City Council on the report of costs and on all objections or protests shall be final and conclusive.

1. Personal Obligation. If, after the hearing at which each owner shall have the opportunity to address the issue, the City Council orders the charge to be a personal obligation of each owner of the property involved, then it shall direct the Finance Department to collect the amount of the charge on behalf of the City of Elk Grove by use of all appropriate legal remedies.

2. Special Assessment. If, after the hearing at which each owner shall have the opportunity to address the issue, the City Council orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien on the property.

K. Service of Confirmed Report of Costs. Promptly following confirmation of the report by the City Council, the City Clerk shall serve upon the owner or owners, and all parties in interest, a copy of the confirmed report of costs. The confirmed report of assessment shall include the following items: 1) the amount of the confirmed costs, 2) demand that the same be paid in full to the City within thirty (30) days from the date of service, and 3) a statement that failure to receive payment within the time allotted shall result in the costs either becoming a personal obligation of the owner or the recording of a special assessment lien against the subject property. Service of the confirmed report of costs shall be effected in the same manner as service of the notice of hearing as set forth above in this section.

### **16.22.501 Costs-Assessments.**

A. Costs Liened if Not Paid within Thirty Days. If the costs as confirmed have not been received by the City within thirty (30) days of the date notice thereof is effective, and the City Council has ordered that such costs be assessed against the property, the costs shall be assessed against the parcel of land, as authorized by Section 25845 of the Government Code, and a notice of abatement lien may be recorded against the subject property and notice thereof shall be transmitted to the tax collector. Collection of the special assessment shall be in the same manner as ordinary county taxes, and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.

B. Transfer to Bona Fide Purchaser. If, subsequent to the service of the notice and order, and prior to notice being given to the tax collector for collection as set forth in subsection a. above, the property subject to the notice and order is sold, or title otherwise transferred to a bona fide purchaser for value, said costs shall be the responsibility of the owner of record as of the date said notice and order was placed in the United States postal system or posted on the property, whichever is later.

C. Remedies Cumulative. In addition to assessing the unpaid costs as provided in subsection (A), above, the Finance Director or his or her designated representative may pursue any remedy provided by law for collection of the unpaid costs.

### **16.22.502 Treble Costs.**

Pursuant to Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner is responsible for a condition that may be abated pursuant to Government Code Section 25845, a court may order the owner to pay treble the costs of abatement.

### **16.22.503 Assessment for Summary Abatement.**

Where the charge to be made is the result of summary abatement pursuant to EGMC Section 16.22.402, the City Council may determine whether or not the action to abate was proper, and may confirm the report of cost or not as it may deem proper. Such determination shall be final and conclusive.

### **16.22.504 Time for Contest of Assessment.**

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is ordered to be placed upon the assessment roll as provided herein.

### **16.22.505 Filing Copy of Report with County Auditor/Controller.**

A certified copy of the assessment shall be filed with the County Auditor/Controller on or before August 1. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the County Assessor for the current year.

## **Article VI**

### **Boarding of Vacant Structures in Abatement Proceedings**

#### **16.22.600 Purposes.**

Proceedings for the abatement of dangerous buildings is governed by EGMC Chapter 16.22. Dangerous Building means any building, structure or premises deemed to be dangerous under the provisions of EGMC Section 16.22.301.

Existing ordinances do not provide for the securing of such structures pending the conclusion of enforcement proceedings commenced under EGMC Chapter 16.22. The purpose of this chapter is to authorize such action as a part of such proceedings, and provide for recovery of the City's costs incurred in connection therewith.

#### **16.22.601 Applications.**

This chapter shall apply to every Dangerous Building within the City of Elk Grove.

#### **16.22.602 Administration and Enforcement.**

The Building Official shall administer and enforce this chapter. The Building Official shall assist in the inspection of structures, and in the presentation of evidence at hearings held pursuant to EGMC Section 16.22.605. Nothing herein shall be construed as limiting the authority of the Building Official, as successor to the powers and duties vested by EGMC Chapter 16.22 or to initiate and inspection pursuant to EGMC Section 16.22.040.

#### **16.22.603 Securing.**

A. The Building Official may require any structure that constitutes a Dangerous Building and is not undergoing active repair to be secured, within a maximum of seven (7) days of the notice. Securing may include both fencing and boarding. Whenever the Building Official determines that a Dangerous Building constitutes an immediate threat to the public health or safety, or the owner fails to secure it after being required to do so, the Building Official shall secure such structure in accordance with the terms of this chapter. The Building Official may have plans and specifications prepared, and such securing



and all services incidental thereto performed, by City personnel or by contract in the manner provided by EGMC Section 16.22.350, if a Dangerous Building. It shall be unlawful and a violation of this code for any person to remove, deface or destroy the boards posted by the Building Official pursuant to this section without the prior written permission of the Building Official. Any person who occupies this building and/or removes boards, removes may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 16.18.

#### **16.22.604 Securing-Notice.**

The Building Official shall give written notice of any securing required pursuant to this Chapter as a part of the notice required by EGMC Section 16.22.404, for a Dangerous Building. If the Building Official secures the property, such notice shall be given as part of the notice required by EGMC Section 16.22.500. The notice shall be issued within three (3) business days following the completion of such securing. Such notice shall include a description of the conditions found to constitute an immediate threat to the public health or safety.

#### **16.22.605 Securing-Hearings.**

Any person to whom notice is issued pursuant to EGMC Section 16.22.0604 shall have the right to contest the Building Official's decision to secure the structure at the hearing provided pursuant to EGMC Section 16.22.404, for Dangerous Buildings. At the hearing the Building Official shall have the burden of proving, by a preponderance of the evidence that conditions existed rendering the structure a threat to the public health or safety.

#### **16.22.606 Securing-Costs-Assessment.**

If the Building Official's decision to secure is either not contested pursuant to EGMC Section 16.22.605, or, following hearing thereon, is sustained by the City Council, the City's costs of securing pursuant to EGMC Section 16.22.603, including, but not limited to the costs of all services rendered by or on behalf of the City in connection therewith, shall be assessed and collected in accordance with EGMC Sections 16.22.500 through 16.22.505 and 16.22.460, for a Dangerous Building.

### **Chapter 16.23**

#### **BOARDING OF VACANT STRUCTURES IN ABATEMENT PROCEEDINGS**

Sections:

16.23.010 Purposes.

16.23.020 Definitions.

16.23.030 Application.

16.23.040 Administration and enforcement.

16.23.050 Securing.

16.23.060 Securing – Notice.

16.23.070 Securing – Hearings.

16.23.080 Securing – Costs – Assessment.

**16.23.010 Purposes.**

Proceedings for the abatement of substandard dwellings and dangerous buildings are governed, respectively, by EGMC Chapters 16.20 and 16.22. From time to time, such proceedings concern vacant buildings which are unsecured and accessible to unauthorized persons. Unauthorized persons do in fact trespass upon, congregate within and occupy such vacant buildings. Such trespass and occupancy produce criminal activity, principally the illegal selling and serving of drugs and repeated vandalism; create blight; make the buildings fire and safety hazards to the adjacent community; and threaten the health and safety of the trespassers and occupants and the general public. Such unsecured structures are hereby declared to be public nuisances.

Existing ordinances do not provide for the securing of such structures pending the conclusion of enforcement proceedings commenced under EGMC Chapter 16.20 or 16.22. The purpose of this chapter is to authorize such action as a part of such proceedings, and provide for recovery of the City's costs incurred in connection therewith.

**16.23.020 Definitions.**

As used in this chapter, the following definitions shall apply:

A. "Chief" shall mean the Chief Building Official, and any subordinate employee to whom he or she delegates responsibility for purposes of this chapter;

B. "Director" shall mean the Planning Director and any subordinate employee to whom he or she delegates responsibility for the purposes of this chapter;

C. "Substandard dwelling" shall mean a building described by EGMC Section 16.20.100 which is vacant, whether a discrete structure or a unit within a multi-unit structure;

D. "Dangerous building" shall mean a building described by EGMC Section 16.22.301 which is vacant, whether a discrete structure or a unit within a multi-unit structure.

#### **16.23.030 Application.**

This chapter shall apply to every substandard dwelling and every dangerous building within the City.

#### **16.23.040 Administration and enforcement.**

The Director shall administer and enforce this chapter. The Director shall assist in the inspection of structures, and in the presentation of evidence at hearings held pursuant to EGMC Section 16.23.070, upon request by the Director. Nothing herein shall be construed as limiting the authority of the Director, as successor to the powers and duties vested by EGMC Chapters 16.20 and 16.22 in the Director of Public Health, to initiate an inspection pursuant to EGMC Sections 16.20.340 or 16.22.203.

#### **16.23.050 Securing.**

A. The Director may require any structure that constitutes a substandard dwelling or a dangerous building and is not undergoing active repair to be secured within a maximum of seven (7) days of the notice. Securing may include both fencing and boarding. Whenever the Director determines that a substandard dwelling or a dangerous building constitutes an immediate threat to the public health or safety, or the owner fails to secure it after being required to do so, the Director shall secure such structure in accordance with the terms of this chapter. Any required boarding of such structures shall be in accordance with plans and specifications for the boarding of vacant properties, issued by the United States Department of Housing and Urban Development, or such other plans or specifications as may be deemed necessary or desirable by the Director in his or her sole discretion. The Director may have such plans and specifications prepared, and such securing and all services incidental thereto performed, by City personnel or by contract in the manner provided by EGMC Section 16.20.700, if substandard dwelling, or EGMC Section 16.22.419, if a dangerous building.

B. The Director may also order the structure to be boarded with boards painted with red paint. In addition to any notices posted pursuant to EGMC Chapters 16.20 and 16.22, the Director may order that a sign be erected on the boards which shall be in substantially the following form:

THE CITY OF ELK GROVE HAS DETERMINED THAT THIS STRUCTURE IS UNSAFE TO OCCUPY AND IS A BLIGHT TO THE COMMUNITY

Owner: (give name of current owner, as shown on the last equalized assessment roll available on the date of boarding or any other owners ascertained to be more accurate)

Phone Number: (give current, public listed telephone number)

Mailing Address: (give current, public listed address)

It shall be unlawful and a violation of this code for any person to remove, deface or destroy the boards posted by the Director pursuant to this section without the prior written permission of the Director. Any person who occupies the building, removes boards, and/or removes or defaces this notice may be charged with either an infraction or misdemeanor offense as provided in EGMC Chapter 1.04.

**16.23.060 Securing – Notice.**

The Director shall give written notice of any securing required pursuant to this chapter as a part of the notice required by EGMC Section 16.20.400 if a substandard dwelling, or EGMC Section 16.22.404, if a dangerous building. If the Director secures the property, such notice shall be given as part of the notice required by EGMC Section 16.20.750 or 16.22.500. The notice shall be issued within three (3) business days following the completion of such securing. Such notice shall include a description of the conditions found to constitute an immediate threat to the public health or safety, whether the structure was boarded with red boards, and/or whether the owner's name and telephone number were posted on the boards.

**16.23.070 Securing – Hearings.**

Any person to whom notice is issued pursuant to EGMC Section 16.23.060 shall have the right to contest the Director's decision to secure the structure at the hearing provided pursuant to EGMC Section 16.20.500, if a substandard dwelling, or EGMC Section 16.22.404, if a dangerous building. At the hearing the Director shall have the burden of proving, by a preponderance of the evidence, that (A) the structure was not locked or otherwise secured against random access, and (B) conditions existed rendering the structure a threat to the public health or safety.

**16.23.080 Securing – Costs – Assessment.**

If the Director's decision to secure is either not contested pursuant to EGMC Section 16.23.070, or, following hearing thereon, is sustained following the hearing described in EGMC Section 16.23.070, the City's costs of securing pursuant to EGMC Section 16.23.050, including, but not limited to, the costs of all services rendered by or on behalf

of the City in connection therewith, shall be assessed and collected in accordance with EGMC Sections 16.20.750 through 16.20.760, if a substandard dwelling, or EGMC Sections 16.22.460 and 16.22.500 through 16.22.505, if a dangerous building.

## **CHAPTER 16.24**

### **PLUMBING CODE**

Sections:

16.24.010 Title.

16.24.020 Purpose.

16.24.030 Adoption of the Uniform Plumbing Code.

16.24.040 Definitions.

16.24.100 UPC and UPC Appendix B amended.

#### **16.24.010 Title.**

This chapter shall be known and cited as the "City of Elk Grove Plumbing Code" (hereinafter referred to as "Code").

#### **16.24.020 Purpose.**

The purpose of this Code is to provide minimum requirements and standards for the protection of the public health, safety, and welfare.

#### **16.24.030 Adoption of the California Plumbing Code.**

In order to provide minimum requirements and standards for the protection of the public health, safety and welfare and to regulate the erection, installation, alteration, addition, repair, relocation, replacement, maintenance, and use of any plumbing system within the City of Elk Grove, the 2007 Edition of the California Plumbing Code, Title 24, Part 5 and all appendix chapters, published by the International Association of Plumbing and Mechanical Officials (IAPMO), as adopted by the Building Standards Commission of the State of California and codified in the California Building standards Code at Title 24, Part 5 of the California Code of Regulations, except as specifically repealed or amended by ordinance of the City of Elk Grove, is hereby adopted and made a part of this chapter as though set forth in full herein. A true and correct copy of the 2007

California Plumbing Code as adopted by this section shall be on file in the office of the City Building Official for inspection and use by the public.

**16.24.040 Definitions.**

A. The Uniform Plumbing Code (UPC), 2006 Edition, as referenced in Sections 17922(a) and 18938(b) of the State Code and the UPC Appendices are published by the International Association of Plumbing and Mechanical Officials.

B. As used in this Chapter, the word "Code" means the Elk Grove City Plumbing Code.

**16.24.100 UPC Amended.**

Notwithstanding the provisions of Section 218 (definitions) and EGMC Section 16.24.030, the UPC is amended as follows:

218 "Private Sewage Disposal Systems" is added as follows:

**218 Private Sewage Disposal Systems.** The installation of private sewage disposal systems is under the jurisdiction of the Environmental Health Division of the Sacramento County Environmental Department.

Section 313.5 is amended as follows:

**313.5** Each system of buried ferrous piping used for either potable water or gas supply shall have a protective coating of an approved type, machine applied and conforming to recognized standards. Field wrapping shall provide equivalent protection and is restricted to those short sections and fittings necessarily stripped for threading.

All buried ferrous piping shall be provided with cathodic protection installed according to Table 3-3 of this Section and the following requirements:

<b>Table 3-3</b>						
<b>Anode Selection Chart</b>						
<b>Allowable length of coated and wrapped buried ferrous gas or water pipe for each size anode</b>						
<b>Anode Size</b>	<b>Pipe Size</b>					
	<b>1/2"</b>	<b>3/4" and 1"</b>	<b>1-1/4" and 1-1/2"</b>	<b>2"</b>	<b>3"</b>	<b>4"</b>
1 lb. anode	50'	–	–	–	–	–
3 lb. anode	150'	100'	50'	50'	–	–
9 lb. anode	500'	200'	200'	150'	100'	100'
17 lb. anode	–	500'	350'	300'	250'	150'
32 lb. anode	–	–	500'	500'	450'	350'

1. Galvanic anodes for cathodic protection of ferrous piping shall be buried not less than three (3' 0") feet below grade and below the bottom of the pipe to be protected. They shall be not less than four (4' 0") feet horizontally from any buried metallic pipe. Before back filling, the anode shall be flooded with a minimum of five (5) gallons of water.

When connected to the pipe being protected, less than six (6") inches above grade, the anode shall be connected with a thermitic weld. Connections six (6") inches or more above grade may be made by the use of a listed mechanical clamp.

2. Water supply piping shall be isolated at the connection of the utility or private tap from the water main and at each building foundation line adjacent to the full-way shutoff valve.

3. Gas supply piping shall be isolated adjacent to each foundation line or at the appliance when located outside the building and from the serving gas supplier's service equipment.

4. Approved isolation fittings shall be located a minimum of six (6") inches above grade, except that fitting at the water tap.

5. Any piping laid in the same trench with pipe requiring cathodic protection shall be separated laterally a minimum of twelve (12") inches from the protected pipe, and piping installed diagonally above pipe requiring cathodic protection shall be separated vertically a minimum of six (6") inches. All separations shall be maintained with clean earth in accordance with Section 315.0.

Section B1 "Roof Drainage" of Appendix B, is amended as follows:

**Section B1 Roof Drainage.** Roof drains and roofs shall be designed to carry away rainfall at the rate of at least three (3") inches of rainfall per hour.

## **CHAPTER 16.28**

### **ELECTRICAL CODE**

Sections:

16.28.010 Title.

16.28.020 Purpose.

16.28.030 Adoption of the National Electrical Code.

16.28.040 Definitions.

16.28.100 NEC Amended.

**16.28.010 Title.**

This chapter shall be known and cited as the "City of Elk Grove Electrical Code" (hereinafter referred to as "Code").

**16.28.020 Purpose.**

The purpose of this Code is to provide minimum electrical system standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, and quality of materials.

**16.28.030 Adoption of the National Electrical Code.**

In order to provide minimum standards for the proper regulation of the installation of electrical systems within the City of Elk Grove, the 2007 Edition of the California Electrical Code, Title 24, Part 3, and all appendix chapters, published by the National Fire Protection Association (NFPA), as adopted by the Building Standards Commission of the State of California and codified in the California Building Standards Code at Title 24, Part 3, of the California Code of Regulations, except as specifically repealed or amended by ordinance of the City of Elk Grove, is hereby adopted and made a part of the Chapter as though set forth in full herein. A true and correct copy of the 2007 California Electrical Code shall be in the office of the City Building Official for inspection and use by the public.

**16.28.040 Definitions.**

A. The National Electrical Code, 2005 Edition, as referenced in Sections 17922(a) and 18938(b) of the State Code, is published by the National Fire Protection Association International.

B. As used in this Chapter, the word "Code" means the City of Elk Grove Electrical Code.

**CHAPTER 16.32**

**MECHANICAL CODE**

Sections:



16.32.010 Title.

16.32.020 Purpose.

16.32.030 Adoption of the California Mechanical Code.

16.32.040 Definitions.

**16.32.010 Title.**

This chapter shall be known and cited as the "City of Elk Grove Mechanical Code" (hereinafter referred to as "Code").

**16.32.020 Purpose.**

The purpose of this Code is to provide minimum system standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance or use of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances within this jurisdiction.

**16.32.030 Adoption of the California Mechanical Code.**

In order to provide minimum standards to safeguard life, limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation, maintenance and use of heating, ventilating, cooling, refrigeration systems, and other heat-producing appliances and systems within the City of Elk Grove, the 2007 edition of the California Mechanical code, Title 24, Part 4, and all appendix chapters, published by the International Association of Mechanical and Plumbing Officials (IAPMO), as adopted by the Building Standards Commission of the State of California and codified in the California Building Standards Code at Title 24, Part 4 of the California Code of Regulations, except as specifically repealed or amended by ordinance of the City of Elk Grove, is hereby adopted and made a part of this Chapter as though set forth in full herein. A true and correct copy of the 2007 California Mechanical Code as adopted by this section shall be on file in the office of the City Building Official for inspection and use by the public.

**16.32.040 Definitions.**

A. The Uniform Mechanical Code (UMC), 2006 Edition, as referenced in Sections 17922(a) and 18938(b) of the State Code, and the UMC Appendix are published by the International Association of Plumbing and Mechanical Officials (IAPMO).

B. As used in this Chapter, the word "Code" means the City of Elk Grove Mechanical Code.

## **Chapter 16.34**

### **UNIFORM CODE FOR BUILDING CONSERVATION**

Sections:

16.34.130 Adoption.

#### **16.34.130 Adoption.**

In order to regulate and preserve the construction, enlargement, alteration, repair, conversion, occupancy, equipment, wiring, plumbing and use of existing buildings within the City, the 1997 Edition of the Uniform Code for Building Conservation and all its Appendices, published by the International Conference of Building Officials, is hereby adopted and made part of this chapter as though set forth in full herein. A true and correct copy of the 1997 Uniform Code for Building Conservation shall be on file in the office of the Building Official for examination and use by the public.

## **Chapter 16.36**

### **SWIMMING POOLS**

Sections:

#### **Article I. Barriers for Swimming Pools, Spas and Hot Tubs**

16.36.110 General.

16.36.120 Definitions.

16.36.130 Requirements.

16.36.140 Request for approval.

16.36.150 Applicability.

#### **Article II. Title, Scope, and General**

16.36.210 Swimming pool, spa and hot tub code adopted.

16.36.220 Purpose.

16.36.230 Scope.

16.36.240 Short title.

16.36.250 Exceptions to swimming pool locations.

### **Article III. Amendments to the 1997 Edition, Uniform Swimming Pool, Spa and Hot Tub Code**

16.36.310 Chapter 3 retitled.

16.36.320 Section 302, turnover time, amended.

16.36.330 Section 310, wastewater disposal, amended.

16.36.335 Section 317(a) amended.

### **Article I. Barriers for Swimming Pools, Spas and Hot Tubs**

#### **16.36.110 General.**

The provisions of this article apply to the design and construction of barriers for swimming pools located on the premises of Group R, Division 3 Occupancies.

#### **16.36.120 Definitions.**

For the purpose of this article, certain terms, words, and phrases are defined as follows:

A. Above-ground/On-ground Pools. See definition of “swimming pool.”

B. “Approved child safety device” is a swimming pool safety device that has been tested and listed by UL, or any other independent testing agency that has been recognized and accepted by the Building Official, specifically for use as a swimming pool safety device, such as a tested and listed door alarm system or a tested and listed swimming pool cover.

C. “Barrier” is a fence, wall, building wall, or combination thereof that completely surrounds the swimming pool and obstructs access to the swimming pool.

D. “Grade” is the underlying surface such as earth or a walking surface.

E. Hot Tub. See definition of “swimming pool.”

F. In-ground Pool. See definition of “swimming pool.”

G. "Separation fence" is a barrier which separates all doors of a dwelling unit with direct access to a swimming pool from the swimming pool.

H. Spa. See definition of "swimming pool."

I. "Swimming pool" is any structure intended for swimming or recreational bathing that contains water over eighteen (18") inches deep. This includes in-ground, above-ground, and on-ground swimming pools; hot tubs; portable and nonportable spas; and fixed-in-place wading pools.

J. "Swimming pool, indoor" is a swimming pool which is totally contained within a residential structure and surrounded on all four sides by walls of said structure.

K. "Swimming pool, outdoor" is any swimming pool which is not an indoor pool.

### **16.36.130 Requirements.**

A. Outdoor Swimming Pool. An outdoor swimming pool shall be provided with a barrier that, once installed, shall be inspected and approved by the Building Official prior to filling the swimming pool with water. The barrier shall comply with each of the following:

1. The top of the barrier shall be at least forty-eight (48") inches above grade measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be two (2") inches measured on the side of the barrier that faces away from the swimming pool. The maximum vertical clearance at the bottom of the barrier may be increased to four (4") inches when grade is a solid surface such as a concrete deck, or when the barrier is mounted on the top of the above-ground pool structure. When barriers have horizontal members spaced less than forty-five (45") inches apart between the tops of the horizontal members, the horizontal members shall be placed on the pool side of the barrier. Any decorative design work on the side away from the swimming pool, such as protrusions, indentations or cutouts, which render the barrier easily climbable, is prohibited.

2. Openings in the barrier shall not allow passage of a one and three-quarter (1.75") inch or greater diameter sphere.

Exceptions:

i. When vertical spacing between such openings is forty-five (45") inches or more, the opening size may be increased such that the passage of a four (4") inch or greater diameter sphere is not allowed;

ii. for fencing composed of vertical and horizontal members, the spacing between vertical members may be increased to a maximum four (4") inches when the distance between the tops of the horizontal members is forty-five (45") inches or more.

3. Chain link fences used as the barrier shall not be less than eleven (11 ga) gauge.

4. Solid barriers that do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions except for tooled masonry joints.

5. Access gates shall comply with the requirements of subsections (A)(1) through (4) of this section. Pedestrian access gates shall be self-closing and have a self-latching device. Where the release mechanism of the latching device is located less than fifty-four (54") inches from grade, (a) the release mechanism shall be located on the pool side of the gate at least three (3") inches below the top of the gate, and (b) the gate and barrier shall have no opening greater than one-half (0.5") inch within eighteen (18") inches of the release mechanism. Pedestrian gates shall swing away from the pool. Any gates other than pedestrian access gates shall be equipped with lockable hardware or padlocks and shall remain locked at all times when the pool is not in use.

6. Where a wall of a Group R, Division 3 Occupancy dwelling unit serves as part of the barrier and contains door openings between the dwelling unit and the outdoor swimming pool, which provide direct access to the pool, a separation fence meeting the requirements of subsections (A)(1) through (5) of this section shall be provided.

Exception: An approved child safety device, as defined in EGMC Section 16.36.120(B), subject to a prior written determination by the Building Official that the degree of protection to small children afforded by such an approved device is equal to that provided by a separation fence meeting the requirements of subsections (A)(1) through (5) of this section.

7. Where an above-ground pool structure is used as a barrier, or where the barrier is mounted on the top of the pool structure and the means of access is a ladder or steps, then either (a) the ladder or steps shall be capable of being secured, locked, or removed to prevent access, or (b) the ladder or steps shall be surrounded by a barrier that meets the requirements of subsections (A)(1) through (6) of this section. When the ladder or steps are secured, locked, or removed, any opening created shall be protected by a barrier complying with subsections (A)(1) through (6) of this section.

B. Indoor Swimming Pool. For an indoor swimming pool, protection shall comply with the requirements of subsection (A)(6) of this section.

C. Spas and Hot Tubs. A spa or hot tub with a locking safety cover which complies with the ASTM Standard F 1346-91 shall not be required to provide other barriers. Where a

locking safety cover is not provided, the spa or hot tub shall comply with the requirements of subsection (A) of this section.

**16.36.140 Request for approval.**

Any person desiring the approval of a swimming pool child safety device other than the type or kind mentioned in EGMC Section 16.36.130 shall file a written request for such approval with the Building Official describing the type of child safety device. If, in the opinion of the Building Official, the child safety device will afford equal protection to small children, the Building Official shall approve the same in writing. The Building Official shall establish specific compliance criteria for any such child safety device, which shall be installed and inspected for compliance therewith, prior to filling the swimming pool with water.

**16.36.150 Applicability.**

This article is intended, and does hereby apply, to swimming pools for Group R, Division 3 Occupancies. Any public swimming pool shall meet the barrier requirements contained in Section 9024 of Title 24, Part 2 the California Code of Regulations.

**Article II. Title, Scope, and General**

**16.36.210 Swimming pool, spa and hot tub code adopted.**

The Uniform Swimming Pool, Spa and Hot Tub Code, 1997 Edition, and the standards cited in Table 1 thereof, hereafter collectively known as the USPC, as published by the International Association of Plumbing and Mechanical Officials, is adopted as the Swimming Pool Code for the City of Elk Grove, with such revisions, exceptions, deletions, and additions approved by the City Council hereinafter set forth in this chapter as exceptions to the USPC. Part I of the USPC is not adopted as part of the City of Elk Grove Pool Code. Except as otherwise provided by this chapter and EGMC Chapter 16.02, all construction, electrification and maintenance of swimming pools and barriers within the City shall be in conformance with state codes and any rules and regulations promulgated pursuant thereto.

**16.36.220 Purpose.**

The ordinance codified in this chapter provides minimum requirements and standards for the protection of the public health, safety, and welfare.

**16.36.230 Scope.**

The provisions of this code shall apply to the erection, installation, alteration, addition, repair, relocation, replacement, maintenance, or use of any swimming pool, spa, or hot tub plumbing system except as otherwise provided for in this code.

**16.36.240 Short title.**

The Uniform Swimming Pool, Spa and Hot Tub Code, 1997 Edition, including the standards cited in Table 1 thereof, and the revisions, exceptions, deletions, and additions provided herein, shall be known as the City of Elk Grove Swimming Pool Code.

**16.36.250 Exceptions to swimming pool locations.** The Building Official may authorize the construction of a swimming pool, hot tub, spa, spa pool, or similar pools across a property line or in the rear yard or side yard of an adjacent lot or within the common area of a planned development, provided:

A. The construction of the swimming pool, spa, spa pool, hot tub, or other pool and the location thereof have been previously approved by the Planning Department; or the locations of the swimming pool, spa, spa pool, hot tub, or other pool is specified on an approved tentative subdivision map.

B. Easements have been recorded and reserved for the lot which specifically provide for the location and construction of the swimming pool, hot tub, spa, spa pool, or other pool and necessary appurtenances and which allow for the use and maintenance of the swimming pool, spa, spa pool, hot tub, and other pool and appurtenances.

C. The easements, prior to the recordation thereof, have been approved by the City Attorney of City of Elk Grove.

**Article III. Amendments to the 1997 Edition, Uniform Swimming Pool, Spa and Hot Tub Code**

**16.36.310 Chapter 3 retitled.** Chapter 3 of the Uniform Swimming Pool, Spa and Hot Tub Code, titled "General Requirements - Public and Private Pools," shall be retitled in the Elk Grove Municipal Code to read "General Requirements – Private Pools."

**16.36.320 Section 302, turnover time, amended.**

Section 302 of the Uniform Swimming Pool, Spa and Hot Tub Code is amended to read as follows:

Section 302. Turnover Time. The entire design of matched components shall have sufficient capacity to provide a complete turnover of pool water in:

1. Private pools: twelve (12) hours or less
2. Wading pools: two (2) hours or less
3. Private spas and hot tubs: one (1) hour or less

**16.36.330 Section 310, wastewater disposal, amended.**

Section 310 of the Uniform Swimming Pool, Spa and Hot Tub Code is amended to read as follows:

Section 310. Wastewater Disposal. No direct or indirect connection shall be made between any storm drain, sewer, drainage system, seepage pit, underground leaching pit, or subsoil drainage line and any line connected to a swimming pool unless approved by the administrative authority.

When wastewater from a swimming pool is permitted by the administrative authority to be disposed of through a public sewer, an approved eighteen (18") inch sump with a three (3") inch diameter external trap shall be installed with a connection to a four (4") inch diameter minimum house sewer and shall extend to a minimum of three (3") inches above finished grade and below the finished floor. The connection between the filter waste discharge piping and the sump shall be made by means of an air gap.

Plans and specifications for any deviation from the above manner of installation shall first be approved by the administrative authority before any portion of any such system is installed. When wastewater disposal is to a seepage pit installation, it shall be installed in accordance with the approval granted by the administrative authority.

**16.36.335 Section 317(a) amended.**

Section 317(a) of the Uniform Swimming Pool, Spa and Hot Tub Code is amended to read as follows:

(a) All pool, spa, and hot tub piping shall be inspected and approved before being covered or concealed. It shall be tested and proved tight to the satisfaction of the Building Official under a static water or air pressure test of not less than thirty-five (35 psi) pounds per square inch for fifteen (15) minutes.

**EXCEPTIONS:**

1. All exposed equipment need not be tested as required in this section.



2. Pool and/or spa solar systems and their related above-ground piping shall be tested under actual operating conditions.

## **Chapter 16.40**

### **MOVING BUILDINGS**

#### Sections:

16.40.010 Permit required.

16.40.020 Building relocation application.

16.40.030 Inspections.

16.40.040 Application approval.

16.40.045 Approval limitation on building relocation application.

16.40.050 Posting "Notice of Intention to Move."

16.40.060 Denial of building moving permit.

16.40.070 Appeals – Forms and filing of appeal.

16.40.075 Appeal by applicant – Notice.

16.40.080 Appeal by person other than applicant – Notice.

16.40.100 Issuance of building moving permit.

16.40.110 Authority to issue building moving permit.

16.40.120 Liability insurance required.

16.40.130 House and building moving requirements – Flags, lights, etc.

16.40.140 Approval of house and building moving equipment and apparatus and route by Public Works Director – Bond required.

16.40.150 Highway moving permit.

16.40.160 Highway moving permit limitations – Time.

16.40.170 Public nuisance.

#### **16.40.010 Permit required.**

No person shall move or cause to be relocated any building or structure across any public street or highway, or from one property to another, or from one location to another in the City, or from any city or county outside of the City, without first obtaining a moving permit through the procedures provided in this chapter.

#### **16.40.020 Building relocation application.**

Application for building relocation shall be filed with the Building Official.

A. Contents of Application. The application shall specify the existing location of the building; size, and character of the building to be relocated; the proposed improvements or changes, if any; the proposed location; the property owner's name and address; the intended use of the building; and two (2) complete sets of plans as required for the building moving permit with a completed building moving permit application and completed estimate sheet. The plot plan for the proposed location shall show location of the building indicating proposed setbacks of the building and size, location, and use of all existing buildings at the proposed location, and site developments. On commercial, industrial, or multifamily developments, the Building Official may accept preliminary plans.

B. Entry and Site Identification. The applicant shall arrange for entry of the buildings proposed to be relocated and provide a stake driven in the ground, protruding four (4' 0") feet above grade at the front and rear of the proposed location for posting and attached house numbers as provided by EGMC Section 16.40.050.

#### **16.40.030 Inspections.**

Within five (5) business days of being notified by the applicant, the Building Official shall cause the inspection of the building to be relocated.

#### **16.40.040 Application approval.**

After reviewing the application for building relocation and inspection of the building and proposed location, the Building Official shall give his approval in writing and so notify the property owner and applicant of the requirements imposed on his approval.

Upon said approval, the Building Official shall cause the building and the proposed location to be posted with an "Intent to Move" sign as provided in EGMC Section 16.40.050.

**16.40.045 Approval limitation on building relocation application.**

Approval of building relocation application shall be limited to sixty (60) days from completion of posting period when no appeal is filed.

**16.40.050 Posting “Notice of Intention to Move.”**

When the building has been approved for relocation to a new site, the Building Official shall cause a “Notice of Intention to Move” sign to be posted, on stakes, for five (5) business days from date of posting, with assigned house number, provided by the applicant, at the front and rear of the proposed site and on the front of the building proposed to be moved; such notice shall not be less than thirteen by nineteen (13” x 19”) inches in size and shall set forth the character of the building to be moved, the present and proposed site of the building, and the date of posting.

Exception: Buildings being moved from outside the City of Elk Grove into the City of Elk Grove shall require a ten (10) day posting period in lieu of five (5) days.

A. The building shall not be moved from the location shown on the application for the duration of the required five (5) day posting period. If, for any reason, the posting period has been interrupted, the building and proposed site shall be re-posted for an additional five (5) days.

B. No building shall be temporarily relocated on present or other property for temporary storage purposes, except legal contractors’ storage yards, without having written approval of administrative authority having jurisdiction of the property used for this temporary storage. The administrative authority may require a surety bond, cash bond, or other means to ensure the removal of the building and may set a time limit as deemed necessary to protect the public and the City of Elk Grove.

C. No moving permit shall be issued nor the building moved from the existing location until the required posting and appeal period has elapsed.

D. Exemption from “Posting.” A building being relocated on existing property, when approved by the Building Official, may be exempted from the posting requirements.

**16.40.060 Denial of building moving permit.**

The application for a building moving permit shall be denied when:

A. Any unlawful, dangerous, or defective condition of a building proposed to be moved is such that remedy or correction cannot effectively be made; or

B. The relocation of the building to the proposed site would cause appreciable damage to or be materially detrimental to the property or improvements in the district within the immediate vicinity of the proposed new location; or

C. The structure is of a type prohibited at the proposed location by law or regulation of the City.

The Building Official, or his assistants, shall inform the applicant of the denial in writing within ten (10) business days of the filing of the application. The denial shall set forth the reasons therefor, shall designate the applicable provisions of the law or regulations upon which the denial is predicated.

**16.40.070 Appeals – Forms and filing of appeal.**

Any person who is dissatisfied with the decision of the Building Official may appeal pursuant to EGMC Chapter 1.11..

**16.40.075 Appeal by applicant – Notice.**

In the case of an appeal by the applicant for the permit, the appeal must be filed within five (5) business days pursuant to EGMC Chapter 1.11 after the mailing of the notice of denial by the Building Official. Upon notice of appeal by the applicant, the Building Official shall cause a notice to be posted on stakes at the front and rear of the proposed location and on the front of the building proposed to be moved. Such notice shall be not less than thirteen by nineteen (13" x 19") inches in size and shall set forth the character of the building, and the date and place of the hearing of the appeal before the City Council. Such notice shall be posted at least five (5) days prior to the scheduled hearing.

**16.40.080 Appeal by person other than applicant – Notice.**

In the case of an appeal by any person other than the applicant, the appeal must be filed pursuant to EGMC Chapter 1.11 within five (5) business days of the date of posting by the Building Official of the notice of intention to issue a building permit and moving permit.

**16.40.100 Issuance of building moving permit.**

A. If a building moving permit is granted, it shall be granted under conditions which shall require the owner, or agent of the owner, of any building to be moved to comply with the provisions of all applicable state laws and local ordinances, to make such changes or repairs as may be necessary to comply therewith or to fill remaining basements or other subsequent openings on the property.

B. No building relocated in accordance with the provisions of this chapter shall be used or occupied or have utility services connected thereto until said necessary changes or repairs have been completed.

C. Any building relocated in another location shall be brought up to existing regulations of the Building, Plumbing, Mechanical, and Electric Codes. The Building Official may waive a specific requirement when the requirement met the City of Elk Grove Building Code in effect at the time it was built and does not cause a health or safety hazard.

D. Prior to the issuance of any building moving permit, the applicant for the moving permit must produce evidence indicating:

1. That he has sealed the sewer line at the site from which the building is being moved in a manner prescribed by the political subdivision having jurisdiction thereof; or

2. That he has properly destroyed the septic tank system in accordance with the County Health Department requirements.

E. The Building Official shall require the owner or agent to deposit a certificate of deposit or a surety bond with the City to ensure compliance with the conditions imposed on the building moving permit. The surety bond must be issued by a corporate surety authorized to do business in the state of California and shall be filed in the form prescribed by the Building Official and subject to his or her approval. The amount of the bond shall be set at the discretion of the Building Official. At the time of filing the certificate of deposit, or surety bond with the City, the property owner must also execute and file a statement in substantially the following language:

I, \_\_\_\_\_, the applicant and property owner, hereby promise to comply with the conditions imposed on the building permit No. \_\_\_\_\_. By way of guarantee that this work will be done, I/we herewith deposit with the City a (certificate of deposit, or surety bond) in the sum of \$\_\_\_\_\_ and agree that in the event these conditions are not fulfilled within one hundred eighty (180) days hereafter, the City may use said certificate of deposit, or forfeit the surety bond and apply the proceeds either to cause said conditions to be fulfilled or to demolish the building which was under the authority of said building permit.

F. The condition(s) imposed upon the issuance of the building moving permit for a moved building shall be met within one hundred eighty (180) days. Noncompliance of this requirement shall give cause to forfeit the certificate of deposit or surety bond and to abate as a public nuisance.

G. Building Relocation Application Fee. The applicant shall pay a relocation application fee for each application at the time of issuance. The fee for each permit shall be that fee prescribed in EGMC Chapter 16.90.

H. Fee Refund. No refund shall be made where an inspection is made as required by EGMC Section 16.40.030. The Building Official may authorize the refunding of not more than eighty (80%) percent of the application fee when no inspection was made as required by EGMC Section 16.40.030. The Building Official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than one hundred eighty (180) days from the date of fee payment.

I. Exemption from Building Relocation Application Fee.

1. Buildings that are being moved from within the City of Elk Grove to locations outside the City.
2. Buildings or portions of buildings being moved to or through the City that are approved manufactured buildings.
3. Incidental accessory structures of one hundred twenty-five (125 ft<sup>2</sup>) square feet or less which will not be used for human habitation.
4. Buildings being moved to a storage yard approved by the Zoning Code for storage purposes.

**16.40.110 Authority to issue building moving permit.**

In the event the decision of the Building Official to grant the building moving permit is not appealed within the five (5) day posting period specified in EGMC Section 16.40.050, and the building proposed to be moved will not come within the scope of the conditions prohibited by EGMC Section 16.40.060, and the applicant has complied with all other applicable requirements of this chapter, the Building Official shall issue the building moving permit.

In the event an appeal has been filed, the Building Official shall issue or deny the permit, pursuant to the terms of the final decision of the City Council and the other applicable provisions of this section.

**16.40.120 Liability insurance required.**

No moving permit shall be issued under the provisions of this chapter unless the permittee shall have first taken out and agreed to maintain at all times public liability insurance in an amount not less than One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars for injuries, including wrongful death, to any one person, and subject to the limit for each person, in an amount not less than Two Hundred Thousand

and no/100<sup>ths</sup> (\$200,000.00) Dollars on account of one accident, and unless also he shall take out and agree to maintain at all times property damage insurance in an amount not less than Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars. Such insurance shall name the City as an insured, and a certificate of insurance shall be filed with the City Manager or his or her designee.

**16.40.130 House and building moving requirements – Flags, lights, etc.**

Red lights at each corner of the building shall be maintained by the mover from one-half (0.5) hour after sunset until one-half (0.5) hour before sunrise.

A. Notice of Emergency Service. Any person moving a building on any City road shall notify the City Public Works Department, immediately before and after the movement.

B. Authorized Moving Hours. Movement of buildings on any City road shall be prohibited between the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.

C. No building shall be moved into the Cosumnes Community Services District without first giving notice to the Cosumnes Community Services District into which the building is to be moved.

**16.40.140 Approval of house and building moving equipment and apparatus and route by Public Works Director – Bond required.**

The Public Works Director, or his or her assistants, may, in their discretion, inspect all rollers, trucks, wheels, dollies, tractors, or other apparatus proposed to be used in the moving operation, and shall restrict the use of such apparatus to that which, in their judgment, will not cause injury to highways, bridges, or other property. The Public Works Director and his or her assistants may also require reasonable changes in the route proposed, even though the route required may be longer than the one proposed, and also require an applicant or his agent to file a surety bond issued by a corporate surety authorized to do business in the state of California, in such amount of Five Thousand and no/100<sup>ths</sup> (\$5,000.00) Dollars or a certificate of insurance in the amount of Ten Thousand and no/100<sup>ths</sup> (\$10,000.00) Dollars with an oversize, overweight endorsement to guarantee the restoration and repair of City roads damaged by moving equipment and apparatus, in accordance with applicable City standards.

**16.40.150 Highway moving permit.**

When a building permit has been granted by the Building Official and all provisions of this chapter and other regulations and/or requirements for issuing a building permit for the building have been fulfilled, the Public Works Director shall issue a highway moving permit. The applicant shall pay an additional fee for this permit. The permit fee shall be Thirty and no/100<sup>ths</sup> (\$30.00) Dollars.

Buildings that are being moved from outside the City or from within the City to terminate in a city other than the City of Elk Grove that qualify for exemption of the building relocation application fee as provided by EGMC Section 16.40.050(D) and are required to use City roads or highways shall be required to pay the Thirty and no/100<sup>ths</sup> (\$30.00) Dollar fee for a moving permit.

A. Fee for Additional Buildings. The fee for additional buildings or portions of any severed buildings moved at the same time to the same locations as provided herein shall be Ten and no/100<sup>ths</sup> (\$10.00) Dollars.

B. Exemption from Highway Moving Permit. The highway moving permit fee (and fee for additional buildings) shall not be required in the following instances:

1. If the building is being moved from one location to another location and no public road is to be used;
2. Buildings and/or sections of buildings being moved to or through the City that are approved manufactured buildings.

C. The exemption to a highway moving permit does not exempt the buildings in EGMC Section 16.40.020 from the required wide load highway permit.

#### **16.40.160 Highway moving permit limitations – Time.**

Permission to move any building under any moving permit shall expire sixty (60) days after issuance, except that the Public Works Director may extend the expiration time an additional Sixty (60) days.

A. Transfer. Permits issued under this chapter shall not be transferred by the holder thereof to any other person. All movements of buildings authorized by the moving permit shall be made under the control and supervision of the grantee of the permit.

B. Refunds. No fees required by this chapter shall be refunded if the moving of a building authorized by the moving permit is not made.

#### **16.40.170 Public nuisance.**

Any building moved contrary to any of the provisions of this chapter is unlawful and a public nuisance, and the Building Official shall commence action or proceedings for the abatement and removal and enjoinder thereof in a manner provided in this chapter. The remedies provided herein shall be cumulative and not exclusive.



## **Chapter 16.44**

### **LAND GRADING AND EROSION CONTROL**

#### Sections:

16.44.010 Purpose.

16.44.020 Definitions.

16.44.030 Delegation.

16.44.040 Administration.

16.44.050 Permits required.

16.44.060 Permits not required.

16.44.065 Exemptions.

16.44.070 Improvement plans.

16.44.080 Application contents.

16.44.090 Plans.

16.44.100 Specifications.

16.44.110 Security.

16.44.120 Right of entry.

16.44.130 Permit fees.

16.44.140 Environmental review.

16.44.150 Application review.

16.44.160 Contents of permit.

16.44.170 Conditions.

16.44.180 Procedure for imposition.

16.44.190 Term.

16.44.200 Transferability.

16.44.210 Denial of permit.

- 16.44.220 Amendment of permit.
- 16.44.230 Request for inspection.
- 16.44.240 Reports.
- 16.44.250 Cessation of work.
- 16.44.260 Completion of work.
- 16.44.270 Inspection.
- 16.44.280 Grounds for suspension and revocation.
- 16.44.290 Method of suspension or revocation.
- 16.44.300 Appeals.
- 16.44.340 Notices.
- 16.44.350 Action against and release of security.
- 16.44.360 Violations.
- 16.44.370 Laws not enforced.

**16.44.010 Purpose.**

It is the intent of the City Council in enacting this chapter to minimize damage to surrounding properties and public rights-of-way, the degradation of the water quality of watercourses, and the disruption of natural or City-authorized drainage flows caused by the activities of clearing and grubbing; grading; filling and excavating of land; sediment and pollutant runoff from other construction-related activities; and to comply with the provisions of the City's National Pollutant Discharge Elimination System (NPDES) Permit Number CA0082597, issued by the California Regional Water Quality Control Board (Regional Board).

These goals will be achieved by establishing administrative procedures, minimum standards of review, and implementation and enforcement procedures for controlling erosion, sedimentation and other pollutant runoff, including construction debris and hazardous substances used on construction sites, and the disruption of existing drainage and related environmental damage caused by the aforementioned activities.

#### **16.44.020 Definitions.**

As used in this chapter, the following words and phrases shall have the meanings given in this section:

“Applicant” means any person who submits an application for a permit pursuant to this chapter.

“City specifications” means the City Improvement Standards, City Standard Construction Specifications and other standards included in applicable City ordinances, regulations and manuals, as amended from time to time.

“Civil engineer” means a professional engineer in the branch of civil engineering holding a valid certificate of registration issued by the state of California.

“Clearing and grubbing” means moving or removing by manual or mechanical means trees, vegetation and/or the top four inches or greater of soil.

“Compaction” means the act of compacting or consolidating soil and rock material to a specified density, and the resulting compacted state of the material.

“Construction site” means any land area on which the activity of clearing and grubbing, grading, excavating, or filling is occurring.

“Director” means the Public Works Director of the Public Works Department of the City of Elk Grove or his or her designated representative(s).

“Engineering geology” means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

“Environmental Planning Manager” is the City official designated by the City Manager to prepare and process environmental documents.

“Erosion” means the transport of the ground surface or soil as a result of the movement of wind or water.

“Erosion control measures” means seeding, mulching, vegetative buffer strips, sod, plastic covering, burlap covering, watering and other measures which control the movement of the ground surface or soil.

“Grade” is the elevation of the ground surface as measured from a known vertical control.

“Grading” includes the act or result of digging, excavating, transporting, spreading, depositing, filling, compacting, settling, or shaping of land surfaces and slopes, and

other operations performed by or controlled by human activity involving the physical movement of rock or soil.

“Hazardous substances” means those materials listed in Title 40 of the Code of Federal Regulations (40 CFR) Part 117 and/or 40 CFR Part 302.

“National Pollutant Discharge Elimination System (NPDES)” means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318, and 405 of the Clean Water Act.

“Permittee” means the applicant in whose name a valid permit is issued pursuant to this chapter and the applicant’s agents, employees and designated representative(s).

“Person” means any individual, corporation, partnership, association of any type, public agency or any other legal entity.

“Pollutant” is as defined in Title 40 CFR Part 122.

“Runoff” is surface runoff and drainage related to storm events, snow melt, street washwaters related to street cleaning or maintenance and other waters associated with the construction activity which are or may be introduced into the municipal separate storm sewer system.

“Sediment” means soil or earth material deposited by water.

“Sediment control measures” means dikes, sediment detention traps, sediment detention basins, filters, fences, barriers, swales, berms, drains, check dams, and other measures which control the deposit of soil or earth material.

“Site” means a parcel or parcels of real property owned by one or more than one person on which activity regulated by this chapter is occurring or is proposed to occur.

“Slope” is an inclined ground surface the inclination of which is expressed as a percent.

“Structure” means anything constructed or erected which requires location on the ground or attached to something having location on the ground.

“Watercourse” means a river, stream, creek, basin, lake, pond, waterway, or channel, natural or man-made, having a defined bed and banks. Whenever a watercourse consists of an ordinary channel, and in addition thereto, an overflow channel, the watercourse shall be deemed to include all property lying between the banks of the overflow channel.

“Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs and marshes.

**16.44.030 Delegation.**

Whenever in this chapter an authority or power is vested in or a duty is imposed upon an officer or official, an employee subordinate to the officer or official to whom an appropriate delegation has been made shall be entitled to exercise the power or authority and perform the duty.

**16.44.040 Administration.**

Except as otherwise provided, the Director is responsible for administering this chapter and grading and erosion control permits, and is authorized from time to time to promulgate and enforce rules or regulations consistent with and necessary to implement the purposes, intent and express terms of this chapter.

Any rules or regulations promulgated by the Director, or amendments thereof, shall be filed with the City Clerk. The City Clerk shall cause said rules or regulations to be published in a newspaper of general circulation within ten (10) days. No rules or regulations promulgated by the Director, or amendments thereof, shall be enforced or become effective until thirty (30) days following the date on which the rules or regulations are published. Any person shall have fifteen (15) days after the date of publication in which to file an appeal in accordance with the provisions of EGMC Section 16.44.300.

**16.44.050 Permits required.**

Except as provided by EGMC Sections 16.44.060, 16.44.065 or 16.44.070, a grading and erosion control permit shall be required to (A) grade, fill, excavate, store or dispose of three hundred fifty (350 yd<sup>3</sup>) cubic yards or more of soil or earthy material or (B) clear and grub one (1) acre or greater of land within the City. A separate permit is required for work on each site unless sites are contiguous, have the same ownership, and are included in the approved plan. Any determination by the Director as to whether a permit is required may be appealed pursuant to the provisions of EGMC Section 16.44.300.

**16.44.060 Permits not required.**

A. A grading and erosion control permit shall not be required to:

1. Grade, fill, excavate, store or dispose of less than three hundred fifty (350 yd<sup>3</sup>) cubic yards of soil or earthy material; or

2. Clear and grub less than one (1) acre of land within the City; or
3. For the grading, filling, excavating, storing, disposing, or clearing and grubbing for:
  - a. Swimming pools, basements, or footings of structures if authorized by a valid building permit;
  - b. Underground utilities;
    - i. Mining or quarry operations, if a use permit has been granted by the City;
    - ii. Refuse disposal sites operated by a governmental agency;
    - iii. The production of planted agricultural crops;

B. Notwithstanding the provisions of subsection (A) of this section exempting specified activities from the otherwise applicable permit requirements, the activities described in subsection (A) of this section shall be subject to the standards and requirements of this chapter. Any building permit issued in connection with the activities described in subsection (A) of this section or in connection with any building permit issued for a single-family residence on an individual lot may be conditioned on compliance with the standards and requirements of this chapter. Any inspections required pursuant to this chapter or any other chapter of this title shall include a determination of compliance with the purpose of this chapter.

#### **16.44.065 Exemptions.**

A grading and erosion control permit shall not be required for, and the provisions of this chapter shall not apply to, grading, filling, excavating, storing, disposing, or clearing and grubbing for situations where, in the determination of the Director, there is a clear and imminent danger to life or property, or threat of loss of services for which there is an overriding public concern. The Director may, at the time of granting such exemption, impose conditions in accordance with EGMC Section 16.44.170, including, but not limited to, the requirement for the posting of security. Such exemption must be requested from the Director and approved in writing prior to the commencement of any activity regulated by this chapter.

#### **16.44.070 Improvement plans.**

Where an improvement plan is being processed in conjunction with either an approved tentative, parcel, or final map; or a development plan is being processed in accordance with the provisions of EGMC Title 12, such plan shall also be considered as a request to undertake those activities regulated by this chapter. Such plans shall be reviewed and approved, conditionally approved or denied in accordance with the standards and requirements set forth in this chapter and other applicable City specifications. For an

approved tentative, parcel, or final map or development plan, any submitted improvement plans shall include provisions to require compliance with the standards and requirements of this chapter. If an improvement plan is approved, then a grading and erosion control permit shall not be required.

#### **16.44.080 Application contents.**

The application for a grading and erosion control permit shall be filed with the Public Works Department, and on a form and submitted with such information as is prescribed by the Director, including the following:

- A. The name, address and telephone number of the applicant and the applicant's engineer;
- B. The address and parcel number of the location for which the permit is sought;
- C. A copy of all entitlements granted for the property by the City, including conditions of approval and the environmental documentation;
- D. A copy of all required state and federal permits;
- E. Plans conforming with the requirements of EGMC Section 16.44.090;
- F. Specifications conforming with the requirements of EGMC Section 16.44.100, if the Director expressly requires this information;
- G. Security conforming with the requirements of EGMC Section 16.44.110;
- H. Right of entry conforming with the requirements of EGMC Section 16.44.120;
- I. Fees conforming with the requirements of EGMC Section 16.44.130;
- J. Other information as may be required by the Director.

#### **16.44.090 Plans.**

Plans shall be prepared by a civil engineer in conformance with City specifications and shall include the following:

- A. A vicinity map indicating the site location and significant geographic features;
- B. A site delineation map indicating boundary lines of the property and each lot or parcel into which the site is proposed to be divided;
- C. The location of on-site and surrounding watercourses and wetlands, existing and proposed drainage systems, and drainage area boundaries and acreages. Additional hydrologic analysis shall be provided as required by the Director;

D. The location of existing and proposed roads and structures on the site, and on adjacent property;

E. Accurate contours at two (2' 0") foot intervals for slopes up to ten (10%) percent and five (5' 0") foot intervals for slopes over ten (10%) percent showing topography of existing ground and locations of existing vegetation, including all oak trees, all other trees over six (6") inches in diameter measured at four and one-half (4' 6") feet above the ground, groves of trees, and natural features such as rock outcroppings. Spot elevations will be required where relatively flat conditions exist. The spot elevations or contour lines shall be extended off-site for a minimum distance of fifty (50' 0") feet, or one hundred (100' 0") feet in flat terrain;

F. Elevations, location, extent and slope of all proposed grading shown by contours, cross-sections or other means, and location of any disposal areas, fills or other special features to be included in the work;

G. A statement of the quantity of material to be excavated, the quantity of material to be filled, whether such excavation or fill is permanent or temporary, and the amount of such material to be imported to or exported from the site;

H. A delineation of the area to be cleared and grubbed;

I. A statement of the estimated starting date, grading completion date, and when site improvements will be completed;

J. The location, implementation schedule, and maintenance schedule of all erosion control measures and sediment control measures to be implemented or constructed prior to, during or after the proposed activity;

K. A description of measures designed to control dust and stabilize the construction site road and entrance;

L. A description of the location and methods of storage and disposal of construction materials;

M. Any additional plans required by the Director.

#### **16.44.100 Specifications.**

When required by the Director, the following information shall be prepared and signed by a civil engineer, and submitted with the application for a grading and erosion control permit:

A. Preparation of natural ground to occur prior to placement of fill, including provisions for removal of organic or deleterious materials;



- B. Quality control of native or imported fill material;
- C. Degree of compaction;
- D. Gradient of cut and fill slopes;
- E. Geotechnical engineering or engineering geology reports used in the development of the above information.

**16.44.110 Security.**

A. Prior to issuance of the permit, the applicant shall provide security in an amount estimated by the Director to be the cost for stabilizing the activity site if the site is abandoned or work is stopped during the performance of the activity described in the permit. The security shall be one of the following, subject to the approval of the Director:

1. Bond or bonds by one or more duly authorized corporate sureties.
2. A deposit, either with the City or a responsible escrow agent or trust company, at the option of the City, of money or negotiable bonds of the kind approved for securing deposits of public monies.
3. An instrument of credit from an agency of the state, federal or local government when an agency of the state, federal, or local government provides at least twenty (20%) percent of the financing for the project, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary are on deposit and guaranteed for payment, or a letter of credit by such financial institution.

B. The security shall be released to the permittee upon either:

1. Issuance of a certificate of completion, provided no administrative or legal action against such security has been commenced prior to that date and the permittee has complied with the provisions of EGMC Section 16.44.260; or
2. Voluntary relinquishment of the permit by the holder thereof to the City, provided no administrative or legal action against such security has been commenced prior to that date and the permittee has complied with the provisions of EGMC Section 16.44.250.

**16.44.120 Right of entry.**

Whenever any portion of the work requires entry onto adjacent property for any reason, the applicant shall obtain the written consent of the adjacent property owner or his authorized representative, and shall file a copy of said consent with the Director before a permit for such work may be issued.

#### **16.44.130 Permit fees.**

A fee shall be paid by the applicant to the City for plan checking and review, materials testing, site inspections, processing, issuance and other services performed by the Director in connection with the investigation of an application for, and administration of, a grading and erosion control permit. The fees for these services shall be in the amount of the actual costs incurred by the City based on the hourly rate of the personnel performing the services, including all overhead costs, and as determined by the Finance Department.

A minimum deposit of Seven Hundred Fifty and no/100<sup>ths</sup> (\$750.00) Dollars shall be paid by the applicant at the time of and with the filing of the application with the Director. In the event the accrued costs exceed the initial deposit, the City shall submit a monthly bill to the applicant for the amount owing as of the date on the bill. Interest of one and one-half ( 1.5%) percent per billing period, twenty-eight (28) day cycle, compounded each billing period shall be added to the unpaid balance due of any amount which has not been paid in full within twenty-eight (28) days from the date on the bill.

The Director shall not perform any services for an applicant if an amount owing is not paid within twenty-eight (28) days, until such time that all amounts owing and interest thereon is paid in full. The balance of fees owing shall be paid in full prior to final inspection. In the event the actual costs do not exceed the minimum deposit amount, the City shall reimburse the applicant the difference between the deposit amount and the actual total charges.

#### **16.44.140 Environmental review.**

Grading and erosion control permits, and amendments thereto, are subject to the requirements of the California Environmental Quality Act (CEQA). The applicant shall furnish a copy of the application to the Environmental Planning Manager for preparation and processing of the appropriate environmental documents. The Director is authorized to hold public hearings on negative declarations, draft environmental impact reports and final environmental impact reports prepared on applications for grading and erosion control permits, for the purposes of receiving comments from the public. The Director shall not approve a grading and erosion control permit prior to considering the applicable environmental document and complying with the requirements of CEQA and the City procedures for preparation and processing of environmental documents.

#### **16.44.150 Application review.**

The Director shall review and approve, conditionally approve or deny grading and erosion control permit applications and improvement plans in accordance with the

provisions of this chapter. Grading and erosion control permit applications and improvement plans shall be issued or approved unless the Director finds in writing that:

A. The applicant has failed to provide sufficient or adequate plans, information or other data necessary to allow determinations respecting compliance with the provisions of this chapter or City specifications;

B. The environmental review has not been completed, other provisions of this code or of state law pertaining to environmental review have not been satisfied, or the activity will have significant adverse environmental impacts which cannot be substantially mitigated. Where the activity will have significant adverse impacts, the Director may approve the permit in accordance with the provisions of this chapter, EGMC Title 20, and the California Environmental Quality Act of 1970;

C. The proposed activity will violate provisions of this chapter, City specifications, or state or federal laws, and such violation cannot be resolved by the imposition of conditions pursuant to EGMC Section 16.44.170;

D. The proposed activity will adversely affect surrounding properties and public rights-of-way, the water quality of watercourses, and existing drainage.

#### **16.44.160 Contents of permit.**

The grading and erosion control permit shall include but not be limited to a complete description of the activity for which it is issued, the property for which it is issued, the date of issuance and the date of expiration, and a description of any and all conditions upon which the permit has been issued. The permit shall be kept at the site during the activity for which the permit was issued. A grading and erosion control permit authorizes the permittee to undertake only that activity described in the permit and only on the property for which the permit is issued.

#### **16.44.170 Conditions.**

The Director may at the time of issuance of the grading and erosion control permit impose such conditions as are necessary to ensure compliance with this chapter, City specifications, or state or federal laws. Such conditions shall be reasonably related to the public needs created by the proposed activity. Conditions to mitigate environmental impacts of the activity may also be imposed by the Director.

#### **16.44.180 Procedure for imposition.**

Any condition imposed pursuant to the provisions of EGMC Section 16.44.170 shall be embodied, together with the reasons therefor, in the permit and served upon the applicant or permittee.

#### **16.44.190 Term.**

A grading and erosion control permit shall be effective on the date of issuance, and shall remain in force for one year, unless suspended or revoked by the Director, or voluntarily relinquished by the permittee. Before the expiration of a permit, a permittee may apply for an extension of time in which to complete the activity. One extension of not more than one (1) year may be granted by the Director.

#### **16.44.200 Transferability.**

A grading and erosion control permit shall not be transferable or assignable from one person to another, unless approved by the Director and the person to whom the permit is to be transferred agrees to comply with the requirements of the original permit and to any conditions imposed therein.

#### **16.44.210 Denial of permit.**

The Director shall deny an application for a grading and erosion control permit if any of the findings in EGMC Section 16.44.150 are made. Notice shall be served on the applicant, in writing with the reasons stated therefor, pursuant to the provisions of EGMC Section 16.44.340.

#### **16.44.220 Amendment of permit.**

Any proposed changes in the activity authorized by the permit shall be submitted to the Director for review. The permittee shall not undertake or allow activity to occur which does not conform with the plans or conditions of the original permit, unless approved by the Director. The Director shall review any proposed changes in the same manner and pursuant to the same standards as the original application.

#### **16.44.230 Request for inspection.**

Requests for inspection of any site subject to the provisions of this chapter shall be made to the Director at the following phases of activity. Such a request shall be made at least two (2) full business days in advance of the desired day of inspection.

A. When the site has been cleared of vegetation and unapproved fill, and scarified, benched, or otherwise prepared and before any fill is placed; and the erosion control and sediment control measures to be implemented in this phase have been placed;

B. When approximate final elevations have been established; drainage terraces, swales and other drainage devices have been graded and are ready for paving; berms have been installed at the top of slopes; and the erosion control and sediment control measures to be implemented in this phase have been placed;

C. When work has been completed; slope planting established and irrigation systems installed, if required; and the erosion control and sediment control measures to be implemented in this phase have been placed.

The Director, upon inspection of the site, shall notify the person or permittee (1) that the phase of work inspected is approved, or (2) what deficiencies, corrections or other work needs to be completed before approval of that phase.

#### **16.44.240 Reports.**

Notification to the Director shall be required within twenty-four (24) hours following the failure of authorized measures to prevent erosion or sediment from leaving the construction site; the deposit of debris or material on adjoining property or public rights-of-way; or the interference with any existing watercourses or drainage facilities.

#### **16.44.250 Cessation of work.**

If activity is ceased on-site for any reason for a period in excess of fifteen (15) days, and before the activity being conducted under the permit is completed, all necessary steps shall be taken to prevent damage through erosion or sedimentation to adjoining properties or to the public rights-of-way or to any natural or artificial drainage facilities or watercourses. The premises shall also be graded to blend into the adjacent terrain. The Director shall be notified as soon as possible, but no later than fifteen (15) days, after the cessation of work.

#### **16.44.260 Completion of work.**

After completion of work in accordance with and conforming with an approved permit, delivery to the City of record plans and a grading plan as finally implemented, and payment of all fees, the Director shall issue a certificate of completion.

#### **16.44.270 Inspection.**

The Director may enter and inspect property for which a grading and erosion control permit has been applied to determine applicability or compliance with this chapter and City specifications. The Director may also inspect any and all property on which grading, filling, clearing and grubbing, or excavating activities are occurring.

#### **16.44.280 Grounds for suspension and revocation.**

A grading and erosion control permit may be suspended if:

A. The physical state of the property differs from the descriptions, plans or information furnished to the Director in the permit application;

- B. The activity does not conform to the approved plans, grades, conditions or terms of the permit;
- C. The activity is in violation of this chapter, City specifications, or state or federal laws;
- D. Any reports required to be submitted to the Director have not been submitted; or
- E. Any of the information contained in reports submitted to the Director is in error.

**16.44.290 Method of suspension or revocation.**

The Director may suspend or revoke a grading and erosion control permit by issuing a notice of suspension or revocation, stating the reasons therefor, and serving same upon the permittee. Upon suspension or revocation of a permit, in accordance with the provisions of this section, the permittee shall immediately cause all grading, filling, excavating, storing, disposing or clearing and grubbing to cease until written authorization is received from the Director to proceed with the activity.

The permittee shall have fifteen (15) days after the date of service of the suspension or revocation in which to file an appeal in accordance with the provisions of EGMC Section 16.44.300. If such an appeal is filed, the suspension or revocation shall remain in force and be effective until a final decision on the appeal is issued by the City Council.

If the Director suspends a permit, such permit may either be reinstated or revoked by the Director, depending upon whether the permittee corrects the grounds stated for the suspension in the notice issued by the Director. If the permittee fails to remedy the grounds for suspension within a time period specified by the Director, but in no event later than sixty (60) days, the Director shall revoke the permit.

**16.44.300 Appeals.**

If the applicant for a grading and erosion control permit, the permittee, or other persons whose property rights may be affected is dissatisfied with any determination made by the Director, such person may appeal pursuant to EGMC Chapter 1.11.

**16.44.340 Notices.**

Any notice authorized or required by this chapter shall be deemed to have been filed, served and effective for all purposes on the date when it is personally delivered in writing to the party to whom it is directed or deposited in the United States Mail, first class postage prepaid, and addressed to the party to whom it is directed.

Whenever a provision in this chapter requires a public hearing to be conducted, notice of the time, date, place and purpose of the hearing shall be published at least once not later than ten (10) days in advance of the date of commencement of the hearing in a

newspaper of general circulation which is published within the City. The same type of notice shall also be served on each permittee whose permit may be affected by the action taken at the conclusion of the hearing.

**16.44.350 Action against and release of security.**

The Director may commence action against the security provided by a permittee if:

- A. The permittee ceases activities on site prior to completion of work without complying with the provisions of EGMC Section 16.44.250;
- B. The permittee fails to comply with the terms of the permit;
- C. The activity has caused or is threatening to cause damage or injury to persons, property or the environment.

The monies so obtained shall be used solely to finance remedial work undertaken by the City, or a private contractor under contract to the City, and to reimburse the City for any administrative costs and expenses incurred in remedying the situation, including attorneys' fees and legal costs incurred in any necessary action to obtain the security.

**16.44.360 Violations.**

Except as otherwise specifically provided, pursuant to the provisions of Section 25132 of the Government Code, violation of any of the provisions contained in this chapter shall constitute an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

Violation of any of the provisions of this chapter following notice to the permittee by the Director advising of the violation and ordering a cessation thereof shall, pursuant to the provisions of EGMC Chapter 1.04, constitute a misdemeanor.

Violation of any of the provisions of this chapter may be remedied by injunction or other civil proceeding commenced in the name of the City pursuant to direction by the City Council.

**16.44.370 Laws not enforced.**

There are many ordinances and other laws applicable to activities permitted under this chapter which are not sought to be enforced under this permitting process. Such laws include, but are not limited to, building, floodplain management, and land development measures. The issuance of a grading and erosion control permit shall not be deemed to constitute a representation that the activity so permitted or the property upon which such activity is occurring complies with such other ordinances or other laws. Nor shall the existence of such an unrevoked permit be deemed to preclude any criminal or civil

remedy for violation of such other ordinances or laws. The possession of a grading and erosion control permit shall not be deemed to relieve the holder of the requirement to apply for or obtain any other license or permit required by ordinance or statute.

## **Chapter 16.70**

### **ACCESS CONTROLS**

Sections:

16.70.010 Purposes.

16.70.020 Definitions.

16.70.030 Mechanical gate requirements.

16.70.040 Administrative regulations.

16.70.050 Permit required.

16.70.060 Building permit.

16.70.070 Pre-existing gates.

16.70.080 Appeals.

16.70.090 Violation of permit requirements.

16.70.100 Revocation of permits.

16.70.110 Other laws.

#### **16.70.010 Purposes.**

The increasing tendency to install mechanical gates in order to control vehicular and pedestrian access to private streets, parking areas, and mall areas for the purpose of improving security creates a counterbalancing public safety hazard by restricting access of police and fire safety vehicles or personnel, absent measures which guarantee access by such vehicles or personnel in a timely, nondestructive and otherwise effective manner. The purpose of this chapter is to ensure that such measures are taken.

#### **16.70.020 Definitions.**

As used in this chapter, the following terms shall be ascribed the following meanings:



A. "Mall areas" shall mean any privately owned enclosed or unenclosed common area established for vehicular or pedestrian use, and from which access is gained to more than one retail shop or store or professional or other commercial office, or more than four (4) dwelling units;

B. "Mechanical gates" shall mean a gate, crossbar, door or other obstructive device which is utilized for the purpose of restricting, controlling or obstructing entry or exit by motor vehicles or pedestrians to or from private streets, parking areas, or mall areas, and which is not manned on a twenty-four (24) hour, seven (7) days per week basis by a person capable of providing immediate access by a police or fire safety vehicles or personnel;

C. "Parking areas" shall mean any privately owned parking lot or similar parking area utilized for the parking of commuter (nonrecreational) motor vehicles by those shopping at a retail commercial establishment or residing in or visiting a subdivision, apartment complex, condominiums or other residential development containing more than four residential dwelling units;

D. "Private street" shall mean a street which is not open to use by the public at large and which is utilized for the purpose of providing vehicular access to a subdivision, apartment complex, condominiums or other residential development which includes more than four (4) residential dwelling units.

#### **16.70.030 Mechanical gate requirements.**

From and after the date this chapter becomes effective, it shall be unlawful for any person to install a mechanical gate unless either:

A. The Chief of Police certifies in writing that the timely, nondestructive or otherwise effective access of police and fire safety vehicles or personnel will not be impaired; or

B. The mechanical gate is equipped with an emergency override control device which permits access by police and fire safety vehicles or personnel in a manner which the Chief of Police determines is timely, nondestructive and otherwise effective. The emergency override control device shall be a key-operated type switch, lockbox key control or similar mechanism approved by the Chief of Police.

#### **16.70.040 Administrative regulations.**

The Chief of Police may formulate and promulgate written regulations which:

A. Define, describe or otherwise prescribe performance characteristics of required emergency override control devices, including prescription of a particular type or brand of device when necessary to promote security or efficiency;

B. Identify standards or criteria under which the Chief of Police will certify that the existence of a mechanical gate does not impair timely, nondestructive or otherwise effective access by police or fire safety vehicles or personnel; or

C. Establish procedures to ensure appropriate utilization of emergency override control devices and preservation of the security of mechanical gates.

**16.70.050 Permit required.**

From and after the date on which this chapter becomes effective, no person shall install a mechanical gate unless a written permit therefor has first been issued by the Chief of Police which either: A) certifies that the timely, nondestructive or otherwise effective access of police and fire safety vehicles or personnel is not impaired thereby; or B) approves the emergency control device to be installed in connection with the mechanical gate. The permit may be issued by the Chief of Police subject to such conditions as the Chief of Police deems necessary to achieve the objects and purposes of this chapter.

The permit may be denied on grounds either: A) that the applicant has not proposed installation of an emergency override control device and the mechanical gate would impair timely, nondestructive or otherwise effective access by police or fire safety vehicles or personnel; B) the emergency override control device proposed fails to comply with the requirements of this chapter or any regulations promulgated by the Chief of Police pursuant to EGMC Section 16.70.040; or C) installation, operation or maintenance of the mechanical gate would violate another City ordinance, state law, or an applicable law of another governmental jurisdiction, provided that the issuance of the permit shall not be deemed to constitute an express or implied representation that the gate complies with such other laws or be deemed to excuse compliance with such other laws.

Application for the permit shall be made upon such written form as is prescribed by the Chief of Police, and shall be accompanied by such information, data and plans as are required by the Chief of Police.

The City Council may, by resolution, establish a fee required to be paid upon filing of an application for a permit required by this section. The amount of any such fee shall not exceed the costs of administering the provisions of this chapter.

**16.70.060 Building permit.**

With respect to any project which incorporates a mechanical gate, a permit under EGMC Section 16.70.050 shall have been issued therefor in advance of the issuance of any building permit for construction in connection with the project under this title.

#### **16.70.070 Pre-existing gates.**

The Chief of Police shall be authorized to issue and serve personally or by mail a written declaration of nuisance upon any party who owns or operates a mechanical gate which was installed prior to the date this chapter becomes effective, if the Chief of Police determines that the mechanical gate impairs the timely, nondestructive or otherwise effective access by police and fire safety vehicles or personnel, and that by reason of such impairment a serious threat to the health or safety of persons exists. Any such declaration shall contain a statement of the facts upon which the determination by the Chief of Police is based, a statement informing the party upon whom the declaration is served that it shall be unlawful for the mechanical gate to be maintained or operated ninety (90) days following the date of personal service or mailing of the declaration unless a permit therefor has been issued by the Chief of Police pursuant to the provisions of EGMC Section 16.70.050, and shall have attached thereto a copy of the provisions of this chapter.

From and after ninety (90) days following the date of personal service or mailing of a declaration of nuisance, it shall be unlawful for any party to operate or maintain a mechanical gate which is the subject of the declaration of nuisance, unless a permit therefor has been issued pursuant to the provisions of EGMC Section 16.70.050.

#### **16.70.080 Appeals.**

The applicant for a permit required by the provisions of either EGMC Section 16.70.050 or 16.70.070 may appeal the denial pursuant to EGMC Chapter 1.11.

#### **16.70.090 Violation of permit requirements.**

It shall be unlawful to operate or maintain a mechanical gate for which a permit is required by either EGMC Section 16.70.050 or 16.70.070 unless a valid, unrevoked permit has been issued therefor, or to operate or maintain any such mechanical gate in violation of any condition upon which such a permit is issued. An emergency override control device installed pursuant to such a permit shall at all times be maintained in good condition and repair so long as the mechanical gate is utilized to control, obstruct or inhibit vehicular or pedestrian access.

#### **16.70.100 Revocation of permits.**

A permit issued pursuant to the provisions of either EGMC Section 16.70.050 or 16.70.070 shall be subject to revocation upon any one of the following grounds:

A. Failure to comply with any one or more of the conditions of the permit;

B. Failure to maintain any emergency override control device in good condition and repair as required by EGMC Section 16.70.090;

C. Failure to comply with any regulations promulgated pursuant to the provisions of EGMC Section 16.70.040; or

D. Violation of any of the requirements of this chapter.

The Chief of Police may commence proceedings for the revocation of a permit by personally serving or mailing to the holder of the permit a written notice of revocation. The notice of revocation shall contain a statement of the grounds of revocation, the facts upon which the grounds are based, and shall have attached thereto a copy of the provisions of this chapter. The revocation shall become complete, final and effective twenty (20) days following the date of personal service or mailing of the notice of revocation, unless by that date an appeal is received.

Any such appeal shall be filed pursuant to EGMC Chapter 1.11.

#### **16.70.110 Other laws.**

The provisions of this chapter shall not be deemed to either expressly or impliedly repeal, amend or otherwise supersede any ordinance or law which pertains to the same or similar subject matter, and the provisions of this chapter together with those of such other law or ordinance shall each be deemed to be fully applicable and operable.

### **Chapter 16.81**

#### **CITY OF ELK GROVE EAST FRANKLIN FACILITIES FEE**

Sections:

16.81.010 Purpose.

16.81.020 Definitions.

16.81.030 Establishment of City of Elk Grove East Franklin park facilities fund.

16.81.040 Establishment of City of Elk Grove East Franklin landscape corridor facilities fund.

16.81.050 Establishment of City of Elk Grove East Franklin supplemental drainage facilities fund.

16.81.060 Establishment of City of Elk Grove East Franklin facilities fee program administration fund.

16.81.070 Adoption of East Franklin facilities fee.

16.81.080 East Franklin facilities fee components.

16.81.090 Calculation of East Franklin facilities fee components.

16.81.100 Payment of development fees.

16.81.110 Fee credits and reimbursements.

16.81.120 Compliance with other laws.

**16.81.010 Purpose.**

A. The City's General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for urban expansion.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing fees to fund the cost of capital facilities, the need for which is generated by the type and level of development designated in the General Plan.

D. The City Council hereby determines that payment of the East Franklin facilities fee will be collected for public facilities for which an account has been established hereby and that are included within the City's capital improvement plan.

**16.81.020 Definitions.**

A. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove building code.

B. "City of Elk Grove East Franklin park facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.81.030.

C. "City of Elk Grove East Franklin landscape corridor facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.81.040.

D. "City of Elk Grove East Franklin supplemental drainage facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.81.050.

E. "City of Elk Grove East Franklin facilities fee administration fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.81.060.

F. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

G. "Department" means the Public Works Department of the City of Elk Grove.

H. "Development fee" means the East Franklin facilities fee, the fee described by this chapter to be collected upon the approval of building permits within the East Franklin specific plan area.

I. "East Franklin facilities fee program" means the program described in this chapter of levying, collecting, and administering of the East Franklin facilities fee.

J. "Engineer" means the City Engineer of the City of Elk Grove.

K. "Facilities" means the facilities financed by the East Franklin facilities fee.

L. "Fee resolution" means the resolution adopted by the City Council that adopts, levies, and establishes the amount of the development fee.

M. "Finance Director" means the Finance Director of the City of Elk Grove.

N. "Land use category" means a single-family, multifamily, or nonresidential land use as further defined in the fee resolution.

O. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

P. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

**16.81.030 Establishment of City of Elk Grove East Franklin park facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the City of Elk Grove East Franklin park facilities fund. That component of the development fee that is collected for park facilities as described in this chapter shall be placed in said fund and shall be administered by the City solely to pay the costs of park facilities.

**16.81.040 Establishment of City of Elk Grove East Franklin landscape corridor facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the City of Elk Grove East Franklin landscape corridor facilities fund. That component of the development fee that is collected for landscape corridor facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of landscaping of roadway, railroad, interceptor, and drainage corridors.

**16.81.050 Establishment of City of Elk Grove East Franklin supplemental drainage facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the City of Elk Grove East Franklin supplemental drainage facilities fund. That component of the development fee that is collected for supplemental drainage facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of land acquisition and supplemental construction costs for drainage channel facilities.

**16.81.060 Establishment of City of Elk Grove East Franklin facilities fee program administration fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the City of Elk Grove East Franklin facilities fee program administration costs fund. That component of the development fee that is collected for administrative costs as described in this chapter shall be deposited in said fund and shall be expended by the City solely to pay the costs of administering the East Franklin facilities fee program.

**16.81.070 Adoption of East Franklin facilities fee.**

The City Council shall adopt, levy, and establish the amount of each component of the development fee by resolution. The development fee shall be applicable to development within the East Franklin specific plan area. The development fee is the successor to the East Franklin facilities benefit area park, landscape corridor, and supplemental drainage facilities fee components of the Laguna South public facilities fee.

**16.81.080 East Franklin facilities fee components.**

The East Franklin facilities fee comprises components for the following uses:

- A. Park facilities;
- B. Landscape corridor facilities;
- C. Supplemental drainage facilities;
- D. Program administrative costs.

**16.81.090 Calculation of East Franklin facilities fee components.**

A. For residential development, the components of the development fee shall be calculated by multiplying the number of units per land use category by a cost per unit factor as identified in the fee resolution.

B. For nonresidential development, the components of the development fee shall be calculated by multiplying the number of building square feet per land use category by a cost per square foot factor as identified in the fee resolution.

C. For the purpose of calculating the development fee for land use categories not described in this chapter or the fee resolution, the Finance Director is hereby authorized to determine the land use category which corresponds most directly to the land use. Alternatively, the Finance Director, in conjunction with the City Engineer, may determine that no land use category corresponds and determine the development fee.

D. In January of each calendar year, the amounts of the fee components of the development fee shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the 20-city CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

**16.81.100 Payment of development fees.**

The development fees imposed pursuant to this chapter shall be paid by the property owner to the City in an amount established by the fee resolution and calculated as further described in EGMC Section 16.81.090. The fees shall be both calculated and paid upon the issuance of building permits.

**16.81.110 Fee credits and reimbursements.**

A. General Provisions. Fee credits and reimbursements will be available for each East Franklin facilities fee component administered by the City. Facilities must meet City standards for acquisition projects in order to be eligible for fee credits or



reimbursements. All construction contracts, construction work, and requests for reimbursement must be performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities." Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

#### B. Timing and Amount of Fee Credits/Reimbursements.

1. Fee credits and reimbursements will only be given to fully completed projects that are identified in the capital improvement plan as an East Franklin facilities fee program facility. Developers may only seek fee credits or reimbursements for such projects from the East Franklin facilities fee program. In order to obtain fee credits for a single-family project, a developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to lots within a final subdivision map, not a large lot map. In order to obtain fee credits for a multifamily or nonresidential project, the developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multifamily project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multifamily or nonresidential projects with mutual agreement between the developer and the City. If all criteria for receiving a fee credit are met as outlined in the credit agreement, the developer may take the credit against the capital facilities fee at the issuance of a building permit.

2. Developers must enter into a reimbursement agreement with the City if they wish to be reimbursed for a facility. The priority of the reimbursement will be determined by the Finance Director, and the reimbursement will only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the East Franklin facilities fee program and not an obligation of the general fund.

3. Developers will be eligible for fee credits and reimbursements up to, but not exceeding, one hundred (100%) percent of the East Franklin facilities fee, excluding any administration costs.

4. The City will reimburse the developer for acquisition or installation of the East Franklin facilities fee program improvements based on the lesser of (a) the actual construction cost of the eligible facilities, as determined in the sole discretion of the City, through its review of the construction contract, plus an allowance for soft costs associated with the actual construction costs, as determined by the City, and (b) the total of allowable costs, based on the cost schedules set forth in the East Franklin facilities fee program (without interest), which may escalate each January by the change in the average of the San Francisco and 20-city Construction Cost Indexes as

reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

C. Park Fee Component Fee Credit/Reimbursement Provisions. Fee credits and reimbursements will be available with respect to the park fee component in accordance with any fee credit and reimbursement agreement.

#### **16.81.120 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities, the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones, on development within the City, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City pursuant to state and local laws. Any credits or repayments pursuant to this chapter shall not include the funding, construction or dedications described in this section.

### **Chapter 16.82**

#### **CITY OF ELK GROVE LAGUNA RIDGE PARK FEE**

Sections:

16.82.010 Purpose.

16.82.020 Definitions.

16.82.030 Establishment of City of Elk Grove Laguna Ridge park facilities fund.

16.82.040 Adoption of Laguna Ridge park fee.

16.82.050 Calculation of Laguna Ridge park fee.

16.82.060 Payment of development fees.

16.82.070 Fee credits and reimbursements.

16.82.080 Compliance with other laws.

**16.82.010 Purpose.**

A. The City's General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities, including park facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for urban expansion.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing fees to fund the cost of capital facilities the need for which is generated by the type and level of development designated in the General Plan.

D. The City Council hereby determines that payment of the Laguna Ridge park fee will be collected for public facilities for which an account has been established hereby and that are included within the City's capital improvement plan.

**16.82.020 Definitions.**

A. "Age-restricted unit" means a unit in a senior citizen housing development, as described in Section 51.3 of the California Civil Code, the age restrictions with respect to the occupancy of which are contained in recorded covenants, conditions, and restrictions, or another recorded instrument approved by the City Attorney, and provide that they remain in effect for at least forty (40) years.

B. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.

C. "City of Elk Grove Laguna Ridge park facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.82.030.

D. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

E. "Development fee" means the Laguna Ridge park fee, the fee described by this chapter to be collected upon the approval of building permits within City boundaries.

F. "Facilities" means the facilities financed by the Laguna Ridge park fee.

G. "Fee resolution" means the resolution adopted by the City Council that adopts, levies, and establishes the amount of the Laguna Ridge park fee.

H. "Finance Director" means the Finance Director of the City of Elk Grove.

I. "Laguna Ridge area" means, collectively, the Laguna Ridge specific plan area, the Elk Grove Automall, and the Lent Ranch special planning area.

J. "Laguna Ridge park fee program" means the program described in this chapter of levying, collecting, and administering the Laguna Ridge park fee.

K. "Land use category" means a single-family, multifamily, or nonresidential land use as further defined in the fee resolution.

L. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

M. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

#### **16.82.030 Establishment of City of Elk Grove Laguna Ridge park facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the City of Elk Grove Laguna Ridge park facilities fund. The development fees collected shall be placed in that fund and shall be expended solely to pay the costs of City-owned park facilities and equipment for the Bartholomew Sports Park and to pay the costs of administering the Laguna Ridge park fee program.

#### **16.82.040 Adoption of Laguna Ridge park fee.**

The City Council shall adopt, levy, and establish the amount of the Laguna Ridge park fee by resolution. The development fee shall be applicable to development within the Laguna Ridge area. The development fee is the successor to the park facilities fee component of the Laguna South public facilities fee and the park, landscape corridor, and the remaining portion of the administrative components to the interim Automall fee program (also referred to as the Laguna Ridge/Poppy Ridge fee program).

#### **16.82.050 Calculation of Laguna Ridge park fee.**

A. For residential development, the Laguna Ridge park fee shall be calculated by multiplying the number of units per land use category by a cost per unit factor as identified in the fee resolution.

B. For nonresidential development, the Laguna Ridge park fee shall be calculated by multiplying the number of building square feet per land use category by a cost per square foot factor as identified in the fee resolution.

C. For the purpose of calculating the Laguna Ridge park fee for land use categories not described in this chapter or the fee resolution, the Finance Director is hereby authorized to determine the land use category that corresponds most directly to the land use. Alternatively, the Finance Director may determine that no land use category corresponds and determine the Laguna Ridge park fee.

#### **16.82.060 Payment of development fees.**

The development fee imposed pursuant to this chapter shall be paid by the property owner to the City, in an amount established by the fee resolution and calculated as further described in EGMC Section 16.82.050. The fee shall be both calculated and paid upon the issuance of building permits.

#### **16.82.070 Fee credits and reimbursements.**

A. General Provisions. Fee credits and reimbursements will be available for the Laguna Ridge park fee. The City will determine which parks and facilities will be eligible for developers to construct. Facilities must meet City standards for acquisition projects in order to be eligible for fee credits or reimbursements. All construction contracts, construction work, and requests for reimbursement must be performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities." Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

B. Timing and Amount of Fee Credits/Reimbursements.

1. Fee credits and reimbursements will only be given to fully completed projects that are identified in the capital improvement plan as a Laguna Ridge park fee program facility. Developers may only seek fee credits or reimbursements for such projects from the Laguna Ridge park fee program. In order to obtain fee credits for a single-family project, a developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to lots within a final subdivision map, not a large lot map. In order to obtain fee credits for a multifamily or nonresidential project, the developer must

enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multifamily project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multifamily or nonresidential projects with mutual agreement between the developer and the City. If all criteria for receiving a fee credit are met as outlined in the credit agreement, the developer may take the credit against the Laguna Ridge park fee at the issuance of a building permit.

2. Developers must enter into a reimbursement agreement with the City prior to construction if they wish to be reimbursed for a facility. The priority of the reimbursement will be determined by the Finance Director, and the reimbursement will only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the Laguna Ridge park fee program and not an obligation of the general fund.

3. Developers will be eligible for fee credits and reimbursements up to, but not exceeding, one hundred (100%) percent of the Laguna Ridge park fee, excluding any administration costs.

4. The City will reimburse the developer for acquisition or installation of the Laguna Ridge park fee program improvements based on the lesser of (a) the actual construction cost of the eligible facilities, as determined in the sole discretion of the City, through its review of the construction contract, plus an allowance for soft costs associated with the actual construction costs, as determined by the City, and (b) the total of allowable costs, based on the cost schedules set forth in the Laguna Ridge park fee program (without interest), which may escalate each January by the change in the average of the San Francisco and 20-City Construction Cost Indexes as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

#### **16.82.080 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones on development within the City, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City of Elk Grove Public Works Department Improvement Standards. Any credits or repayments pursuant to this

chapter shall not include the funding, construction or dedications described in this section.

## **Chapter 16.84**

### **CITY OF ELK GROVE CAPITAL FACILITIES FEE**

Sections:

16.84.010 Purpose.

16.84.020 Definitions.

16.84.030 Establishment of City of Elk Grove police facilities fund.

16.84.040 Establishment of City of Elk Grove Civic Center facilities fund.

16.84.050 Establishment of City of Elk Grove railroad overcrossing facilities fund.

16.84.060 Establishment of City of Elk Grove corporation yard fund.

16.84.070 Establishment of City of Elk Grove intelligent transportation system fund.

16.84.080 Establishment of City of Elk Grove library facilities fund.

16.84.090 Establishment of City of Elk Grove transit facilities (rapid transit) fund.

16.84.100 Establishment of City of Elk Grove transit facilities (bus facilities) fund.

16.84.110 Establishment of City of Elk Grove capital facilities fee program administration fund.

16.84.120 Adoption of capital facilities fee.

16.84.130 Capital facilities fee components.

16.84.140 Calculation of capital facilities fee components.

16.84.150 Payment of development fees.

16.84.160 Fee credits and reimbursements.

16.84.170 Compliance with other laws.

16.84.180 In lieu levy.

**16.84.010 Purpose.**

A. The City's General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for urban expansion.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing fees to fund the cost of capital facilities, the need for which is generated by the type and level of development designated in the General Plan.

D. The City Council hereby determines that payment of the capital facilities fee will be collected for public facilities for which an account has been established hereby and that are included within the City's capital improvement plan.

**16.84.020 Definitions.**

A. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.

B. "Capital facilities fee program" means the program described in this chapter of levying, collecting, and administering of the capital facilities fee.

C. "City of Elk Grove police facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.030.

D. "City of Elk Grove Civic Center fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.040.

E. "City of Elk Grove railroad overcrossing facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.050.

F. "City of Elk Grove corporation yard fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.060.

G. "City of Elk Grove intelligent transportation system fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.070.



H. "City of Elk Grove library facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.080.

I. "City of Elk Grove transit facilities (rapid transit) fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.090.

J. "City of Elk Grove transit facilities (bus facilities) fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.100.

K. "City of Elk Grove capital facilities fee program administration fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.84.110.

L. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

M. "Department" means Public Works Department of the City of Elk Grove.

N. "Development fee" or "CFF" means the capital facilities fee, the fee described by this chapter to be collected upon the approval of building permits within City boundaries.

O. "Engineer" means the City Engineer of the City of Elk Grove.

P. "Facilities" means the facilities financed by the capital facilities fee.

Q. "Fee resolution" means the resolution adopted by the City Council that adopts, levies, and establishes the amount of the CFF.

R. "Finance Director" means the Finance Director of the City of Elk Grove.

S. "Land use category" means a single-family, multifamily, or nonresidential land use as further defined in the fee resolution.

T. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

U. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

**16.84.030 Establishment of City of Elk Grove police facilities fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove police facilities fund. That component of the CFF that is collected for police facilities as described in this chapter shall be placed in said fund and shall be expended by the City of Elk Grove solely to pay the costs of police facilities and equipment.

**16.84.040 Establishment of City of Elk Grove Civic Center facilities fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove Civic Center facilities fund. That component of the CFF that is collected for civic center facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of new civic center buildings, furnishings, equipment, and related financing costs.

**16.84.050 Establishment of City of Elk Grove railroad overcrossing facilities fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove railroad overcrossing facilities fund. That component of the CFF that is collected for railroad overcrossing facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of railroad over-crossing facilities.

**16.84.060 Establishment of City of Elk Grove corporation yard fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove corporation yard fund. That component of the CFF that is collected for corporation yard facilities pursuant to this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of a new corporation yard.

**16.84.070 Establishment of City of Elk Grove intelligent transportation system fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove intelligent transportation system fund. That component of the CFF that is collected for the intelligent transportation system as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of the new intelligent transportation system.

**16.84.080 Establishment of City of Elk Grove library facilities fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove library facilities fund. That component of the CFF that is

collected for library facilities pursuant to this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of library facilities.

**16.84.090 Establishment of City of Elk Grove transit facilities (rapid transit) fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove transit facilities (rapid transit) fund. The component of the CFF that is collected for rapid transit facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of rapid transit facilities or bus facilities.

**16.84.100 Establishment of City of Elk Grove transit facilities (bus facilities) fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove transit facilities (bus facilities) fund. That component of the CFF that is collected for bus facilities as described in this chapter shall be placed in said fund and shall be expended by the City, or its successor agency, solely to pay the costs of bus facilities or rapid transit facilities.

**16.84.110 Establishment of City of Elk Grove capital facilities fee program administration fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove citywide facilities fee program administration costs fund. That component of the CFF that is collected for administrative costs as described in this chapter shall be deposited in said fund and shall be expended by the City solely to pay the costs of administering the capital facilities fee program.

**16.84.120 Adoption of capital facilities fee.**

The City Council shall adopt, levy, and establish the amount of the CFF by resolution.

**16.84.130 Capital facilities fee components.**

The capital facilities fee comprises components for the following uses:

- A. Police facilities;
- B. Civic Center facilities;
- C. Railroad overcrossing facilities;
- D. Corporation yard;
- E. Intelligent transportation system;

- F. Library facilities;
- G. Transit facilities (rapid transit);
- H. Transit facilities (bus facilities);
- I. Program administrative costs.

**16.84.140 Calculation of capital facilities fee components.**

A. For residential development, the components of the CFF shall be calculated by multiplying the number of units per land use category by a cost per unit factor as identified in the fee resolution.

B. For nonresidential development, the components of the CFF shall be calculated by multiplying the number of building square feet per land use category by a cost per square foot factor as identified in the fee resolution.

C. For a gas station, the railroad overcrossing and intelligent transportation system components of the CFF shall be calculated by multiplying the number of vehicle fueling positions by a cost per fueling position factor as identified in the fee resolution.

D. For a hotel or motel, the railroad overcrossing and intelligent transportation system components of the CFF shall be calculated by multiplying the number of guest rooms by a cost per room factor as identified in the fee resolution.

E. For the purpose of calculating the CFF for land use categories not described in this chapter or the fee resolution, the Finance Director is hereby authorized to determine the land use category which corresponds most directly to the land use. Alternatively, the Finance Director, in conjunction with the City Engineer, may determine that no land use category corresponds and determine the CFF.

F. In January of each calendar year, the amounts of the fee components of the CFF shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the 20-city CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

**16.84.150 Payment of development fees.**

The development fees imposed pursuant to this chapter shall be paid by the property owner to the City in an amount established by the fee resolution and calculated as further described in EGMC Section 16.84.140. The fees shall be both calculated and paid upon the issuance of building permits.

## **16.84.160 Fee credits and reimbursements.**

A. General Provisions. Fee credits and reimbursements will be available as part of the capital facilities fee program. Facilities must meet City standards for acquisition projects in order to be eligible for fee credits or reimbursements. All construction contracts, construction work, and requests for reimbursement must be performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities." Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

### **B. Timing and Amount of Fee Credits/Reimbursements.**

1. Fee credits and reimbursements will only be given to fully completed projects that are identified in the capital improvement plan as a capital facilities fee program facility. Developers may only seek fee credits or reimbursements for such projects from the capital facilities fee program. In order to obtain fee credits for a single-family project, a developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to lots within a final subdivision map, not a large lot map. In order to obtain fee credits for a multifamily or nonresidential project, the developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multifamily project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multifamily or nonresidential projects with mutual agreement between the developer and the City. If all criteria for receiving a fee credit are met as outlined in the credit agreement, the developer may take the credit against the capital facilities fee at the issuance of a building permit.

2. Developers must enter into a reimbursement agreement with the City (prior to construction) if they wish to be reimbursed for a facility. The priority of the reimbursement will be determined by the Finance Director, and the reimbursement will only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the capital facilities fee program and not an obligation of the general fund.

3. Developers will be eligible for fee credits and reimbursements up to, but not exceeding, one hundred (100%) percent of the capital facilities fee, excluding any administration costs.

4. The City will reimburse the developer for acquisition or installation of the capital facilities fee program improvements based on the lesser of (a) the actual construction cost of the eligible facilities, as determined in the sole discretion of the City, through its review of the construction contract, plus an allowance for soft costs associated with the

actual construction costs, as determined by the City, or (b) the total of allowable costs, based on the cost schedules set forth in the capital facilities fee program (without interest), which may escalate each January by the change in the average of the San Francisco and 20-city Construction Cost Indexes as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

**16.84.170 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities, the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones on development within the City, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City of Elk Grove Public Works Department Improvement Standards. Any credits or repayments pursuant to this chapter shall not include the funding, construction or dedications described in this section.

**16.84.180 In lieu levy.**

The payment and administration of that component of the CFF that is levied for library facilities as described in this chapter will be in lieu of all other library fees paid and administered pursuant to EGMC Sections 16.82.030, 16.82.120, 16.86.010, 16.86.020, 16.86.040 and 16.86.100.

The payment and administration of those components of the CFF levied for transit facilities as described in this chapter will be in lieu of all other transit fees paid and administered pursuant to EGMC Section 16.82.080 and 16.82.120 as they relate to zones 4 and 7; EGMC Sections 16.87.060, 16.87.090, 16.87.110 and 16.87.115.

**Chapter 16.85**

**ELK GROVE FIRE FEE**

Sections:

16.85.010 Purpose.

16.85.020 Definitions.

16.85.030 Establishment of Elk Grove fire protection facilities fund.

16.85.040 Establishment of Elk Grove fire fee administration account.

16.85.050 Adoption of fire fee.

16.85.060 Calculation of fire fee.

16.85.070 Payment of fire fee.

16.85.080 Fee credits and reimbursements.

16.85.090 Compliance with other laws.

**16.85.010 Purpose.**

A. The City's General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities, including fire protection facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for urban expansion.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing fees to fund the cost of capital facilities the need for which is generated by the type and level of development designated in the General Plan.

D. The City Council hereby determines that payment of the fees for fire protection facilities will be collected for public facilities for which an account has been established hereby and that are included within the capital improvement plan of the Cosumnes Community Services District.

**16.85.020 Definitions.**

A. "Age-restricted unit" means a unit in a senior citizen housing development, as described in Section 51.3 of the California Civil Code, the age restrictions with respect to the occupancy of which are contained in recorded covenants, conditions, and restrictions, or another recorded instrument approved by the City Attorney, and provide that they remain in effect for at least forty (40) years.

B. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove building code.

C. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

D. "Cosumnes CSD" means the Cosumnes Community Services District (formerly known as the Elk Grove Community Services District) or its successor agency as provider of fire protection services in the City.

E. "Elk Grove fire protection facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.85.030.

F. "Elk Grove fire fee administration account" means that special interest-bearing trust account established pursuant to EGMC Section 16.85.040.

G. "Facilities" means the facilities financed by the fire fee.

H. "Fee resolution" means the resolution adopted by the City Council that adopts, levies, and establishes the amount of the fire fee.

I. "Finance Director" means the Finance Director of the City of Elk Grove.

J. "Fire fee" means the fee described by this chapter to be collected upon the approval of building permits within City boundaries to fund fire protection facilities.

K. "Fire fee program" means the program described in this chapter of levying, collecting, and administering the fire fee.

L. "Land use category" means a single-family, multifamily, or nonresidential land use as further defined in the fee resolution.

M. "Nexus study" means the Cosumnes Community Services District nexus study to update Cosumnes CSD's fire fee programs, dated January 10, 2007.

N. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

O. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-



family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

**16.85.030 Establishment of Elk Grove fire protection facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the Elk Grove fire protection facilities fund. That component of the fire fee that is collected to pay the costs of fire protection facilities shall be placed in said fund and shall be expended by the City or transferred to the Cosumnes CSD for expenditure solely to pay the costs of fire protection facilities and equipment. Within the fund there is hereby created an account into which shall be deposited one-half (0.5) of that portion of the fire fee that is collected for administrative costs, which amounts shall be transferred for the use of the Cosumnes CSD.

**16.85.040 Establishment of Elk Grove fire fee administration account.**

The Finance Director shall create a special interest-bearing trust account (within the Elk Grove fire protection facilities fund) entitled the Elk Grove fire fee administration account. One-half (0.5) of that component of the fire fee that is collected for administrative costs as described in this chapter shall be deposited in said account and shall be expended by the City solely to pay the City's costs of administering the fire fee program.

**16.85.050 Adoption of fire fee.**

The City Council shall adopt, levy, and establish the amount of the fire fee by resolution. The fire fee shall be applicable to all development within the City.

**16.85.060 Calculation of fire fee.**

A. For residential development, the fire fee shall be calculated by multiplying the number of units per land use category by a cost per unit factor as identified in the fee resolution.

B. For nonresidential development, the fire fee shall be calculated by multiplying the number of building square feet per land use category by a cost per square foot factor as identified in the fee resolution.

C. For the purpose of calculating the fire fee for land use categories not described in this chapter or the fee resolution, the Finance Director, in conjunction with the Cosumnes CSD, is hereby authorized to determine the land use category that corresponds most directly to the land use. Alternatively, the Finance Director, in conjunction with the Cosumnes CSD, may determine that no land use category corresponds and determine the fire fee.

D. In January of each calendar year, the amount of the fire fee shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the 20-City CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

**16.85.070 Payment of fire fee.**

The development fee imposed pursuant to this chapter shall be paid by the property owner to the City, in an amount established by the fee resolution and calculated as further described in EGMC Section 16.85.060. The fee shall be both calculated and paid upon the issuance of building permits.

**16.85.080 Fee credits and reimbursements.**

A. Eligibility. Fee credits and reimbursements will be available to developers who fund construction of eligible fire protection facilities. The Cosumnes CSD will determine which facilities will be eligible for developers to construct. Facilities must meet Cosumnes CSD standards for acquisition projects in order to be eligible for fee credits or reimbursements. Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

B. Amount of Fee Credits/Reimbursements. Developers will be eligible for fee credits up to one (100%) percent of the fire fee, excluding the administration fee portion. Fee credits/reimbursements will be available for the facility cost up to the lesser of (a) the cost shown in the nexus study and (b) actual construction cost of the eligible facilities. Fee credits/reimbursements will be adjusted each January 1st by the change in the average of the San Francisco and 20-City Construction Cost Indexes as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year. Once fee credits have been determined, they will be used at the time the respective fees would be due. The Cosumnes CSD will be responsible for determining the fee credit amount and will provide this information to the City.

C. Timing and Allocation of Fee Credits. Once all criteria are met, fee credits may be taken against fees when payable at building permit issuance. To obtain fee credits, the fire protection facilities must meet all Cosumnes CSD standards and criteria, and developers must apply to the Cosumnes CSD before payment of fees. The Cosumnes CSD maintains the flexibility to allocate fee credits in a manner it chooses. Fee credits granted shall be on a per-unit basis for residential development and a per-square-foot basis for nonresidential development projects.

D. Timing and Allocation of Reimbursements. Reimbursements will be due to developers who finance facilities in excess of their fair share of the cost of the fire

protection facilities. In such a case, developers would first obtain fee credits up to their fair share cost requirement for a facility and then await reimbursement from fee revenue collections from other fee payers. Reimbursement priority will be determined on a first-in and first-out basis. When funds are available, and no high priority projects need to be financed, reimbursements will be paid to the first developer waiting for reimbursement. Once that developer is paid in full, the next developer awaiting reimbursement will start to be repaid in full. To obtain reimbursements, developers must enter into a reimbursement agreement with the Cosumnes CSD. Reimbursements will be paid only after Cosumnes CSD acceptance of fire protection facilities. Reimbursements are an obligation payable only from the fire fee program funds and not an obligation of the Cosumnes CSD general fund or the City.

#### **16.85.090 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones on development within the City, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City of Elk Grove Public Works Department Improvement Standards. Any credits or repayments pursuant to this chapter shall not include the funding, construction or dedications described in this section.

### **Chapter 16.86**

#### **LAGUNA STONELAKE PUBLIC FACILITIES FINANCING PLAN DEVELOPMENT IMPACT FEE PROGRAM**

Sections:

16.86.010 Purpose.

16.86.020 Definitions.

16.86.030 Establishment and administration of Laguna Stonelake administration fund.

16.86.040 Establishment and administration of Laguna Stonelake library fund.

16.86.050 Establishment and administration of Laguna Stonelake park fund.

16.86.060 Establishment and administration of Laguna Stonelake transportation fund.

16.86.070 Imposition of development fees.

16.86.080 Payment of development fees.

16.86.090 Adoption of the capital improvement plan/program of the PFFP – Development fee program.

16.86.100 Establishment of development fees.

16.86.110 Calculation of development fees.

16.86.120 Establishment of dwelling unit equivalent factor for land uses within the Laguna Stonelake PFFP area.

16.86.130 Credit for construction of transportation facilities.

16.86.140 Reimbursement for construction of transportation facilities in advance of the PFFP – Development fee program schedule.

16.86.150 Reimbursement/credit for construction of park facilities.

16.86.160 Annual program fee adjustment.

16.86.170 Alternative method and compliance with other laws.

**16.86.010 Purpose.**

A. The City of Elk Grove General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities, including, but not limited to:

1. Library facilities;

2. Park facilities; and

3. Transportation facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing those facilities necessary to serve urban development in areas designated for urban expansion. The General Plan also contains additional policies for supporting funding of adequate library facilities, supporting funding of additional park

land acquisition and development, and use of developer dedications, development fees, and other means to pay for an acceptable level of transportation facilities.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing development fees to fund the estimated cost of certain facilities, the need for which is directly or indirectly generated by the type and level of development proposed in the Laguna Stonelake public facilities financing plan (hereinafter in some instances referred to as "PFFP") area.

D. It is the further purpose of this chapter to require that adequate provision be made for developer financed facilities within the PFFP area as a condition of any rezoning and prior to approval of certain permits within said area.

**16.86.020 Definitions.**

A. "Acreage" means the net acreage of any property within the PFFP area.

B. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.

C. "Department" means the Public Works Department of the City of Elk Grove.

D. "Development fee" means the fee levied by this chapter upon the approval of building permits within the PFFP area.

E. "Development unit" means dwelling unit for single-family residential development and acre for multifamily residential development and nonresidential development.

F. "Director" means the Public Works Director of the City of Elk Grove Public Works Department.

G. "Dwelling unit equivalent factor" means the number of dwelling unit equivalents per development unit that indicates the relative financial responsibility for facilities of a specific land use zone in the Zoning Code compared to the financial responsibility for the same facilities of one acre of land zoned for one single-family detached dwelling unit per acre.

H. "Estimated cost" means the cost of constructing a facility based upon the unit costs for each construction item plus contingency, planning, consulting inspection, materials testing, design and construction survey, engineering, and other related costs as set forth in the PFFP – development fee program.

I. "Facilities" means those public facilities designated in the PFFP – development fee program.

J. "Fee per dwelling unit equivalent" means the value that is calculated for each category of public facilities by dividing the total estimated cost of the facilities by the total dwelling unit equivalents generated by development within the PFFP area as identified in the PFFP – development fee program.

K. "Laguna Stonelake administration fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.86.030.

L. "Laguna Stonelake library fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.86.040.

M. "Laguna Stonelake park fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.86.050.

N. "Laguna Stonelake public facilities financing plan area" means all property located within the geographic area as described in the PFFP.

O. "Laguna Stonelake public facilities financing plan – development fee program" means the plan, including any amendments thereto, adopted by resolution by the City Council for financing of designated facilities within the PFFP area, including, but not limited to, a designation of those facilities to be constructed with the development fees collected pursuant to this chapter, the schedule for commencement of construction, the estimated cost of construction of the facilities and the total number of dwelling unit equivalents within the PFFP area.

P. "Laguna Stonelake transportation fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.86.060.

Q. "Multifamily residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of town homes, condominiums and apartments.

R. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of other than single-family detached homes, single-family attached homes, duplexes, town homes, condominiums, and apartments.

S. "Park development agreement" means the park development agreement – Laguna Stonelake between the Cosumnes Community Services District and Laguna Stonelake LLC.

T. "Program fee per development unit" means the development fee per development unit for a particular fee category. The program fee per development unit is calculated by multiplying the fee per dwelling unit equivalent by the dwelling unit equivalent factor for each type of development in each category of public facilities.

U. "Single-family residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, and duplexes.

**16.86.030 Establishment and administration of Laguna Stonelake administration fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the Laguna Stonelake administration fund or other appropriate accounting mechanism. All administration fees collected pursuant to this chapter shall be placed in said fund and shall be expended by the City of Elk Grove, or its successor agency, solely to pay the costs of administration.

**16.86.040 Establishment and administration of Laguna Stonelake library fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the Laguna Stonelake library fund or other appropriate accounting mechanism. All library facilities development fees collected pursuant to this chapter shall be placed in said fund and shall be expended by the Sacramento Public Library, or its successor agency, solely to pay the estimated cost of library facilities identified in the PFFP – development fee program.

**16.86.050 Establishment and administration of Laguna Stonelake park fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund or other appropriate accounting mechanism. All park facilities development fees collected pursuant to this chapter shall be placed in said fund and shall be expended by the Cosumnes Community Services District or its successor agency solely to pay the estimated cost of park facilities identified in the PFFP – development fee program.

**16.86.060 Establishment and administration of Laguna Stonelake transportation fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the Laguna Stonelake transportation fund or other appropriate accounting mechanism. All amounts collected from transportation facilities development fees shall be placed in said fund and shall be expended by the City of Elk Grove or its successor agency solely to pay the estimated cost of transportation facilities identified in the PFFP – development fee program.

**16.86.070 Imposition of development fees.**

No change in a land use designation shall be approved within the PFFP area unless payment of the development fees established by this chapter is required by the property owner as a condition of such approval. No building permit shall be approved for property within the PFFP area unless the development fees for that property are paid as required by this chapter.

**16.86.080 Payment of development fees.**

The development fees imposed pursuant to this chapter shall be paid by the property owner to the Department, in an amount calculated pursuant to EGMC Sections 16.86.110, 16.86.120 and 16.86.130. The fees shall be calculated and paid upon issuance of building permits.

**16.86.090 Adoption of the capital improvement plan/program of the PFFP – Development fee program.**

The City Council shall by resolution adopt the capital improvement plan/program of the PFFP – development fee program. The City Council shall review the capital improvement plan/program of the PFFP – development fee program not less than annually and may amend it by resolution at its discretion.

**16.86.100 Establishment of development fees.**

A separate development fee is hereby established for each of the following categories:

- A. Administration;
- B. Library facilities;
- C. Park facilities; and
- D. Transportation facilities.

**16.86.110 Calculation of development fees.**

A. The development fees per dwelling unit for single-family residential development set forth in EGMC Section 16.86.080 shall be calculated pursuant to the following formula:

$$F = P$$

where,

F = The development fee for each category of public facilities to be paid for each dwelling unit by the owner of property; and P = Program fee per development unit for



each category of public facilities for the type of development as shown in the PFFP development fee program.

B. The development fees per building permit for multifamily residential development and nonresidential development set forth in EGMC Section 16.86.080 shall be calculated pursuant to the following formula:

$F = P \times A$  where, F = The development fee for each category of public facilities to be paid for each building permit by the owner of property; and P = Program fee per development unit for each category of public facilities for the type of development as shown in the PFFP development fee program; and A = The net acreage proposed for development.

C. The development fees shall be paid by the property owner in the amount as calculated pursuant to subsections (A) and (B) of this section for the categories established by EGMC Section 16.86.100.

D. For the purpose of calculating PFFP development fees pursuant to subsections (A), (B), and (C) of this section for properties with an approved use permit which significantly changes the underlying use of the site, the Director is hereby authorized to determine the land use zone which corresponds most directly to the use and density.

E. For the purpose of calculating PFFP development fees pursuant to subsections (A), (B), and (C) of this section for building permits not associated with dwelling units from a recorded single-family residential subdivision, nonresidential development, or multifamily residential development, or for land use categories not included in this chapter, the Director is hereby authorized to determine the appropriate program fees.

**16.86.120 Establishment of dwelling unit equivalent factor for land uses within the Laguna Stonelake PFFP area.**

A. The dwelling unit equivalent (DUE) factors per development unit utilized to calculate the library facilities development fee shall be as follows:

<b>Land Use Category</b>	<b>DUE Factor</b>	<b>Development Unit</b>
Single-Family Residential	1.0	Dwelling Unit
Multifamily Residential	11.7	Acre

B. The dwelling unit equivalent (DUE) factors per development unit utilized to calculate the park facilities development fee shall be as follows:

Land Use Category	DUE Factor	Development Unit
Single-Family Residential	0.9	Dwelling Unit
Multifamily Residential	10.2	Acre
Commercial/Office (LC)	16.3	Acre
Travel Commercial (TC)	16.3	Acre
Industrial Intensive (MP)	18.0	Acre

C. The dwelling unit equivalent (DUE) factors per development unit utilized to calculate the transportation facilities development fee shall be as follows:

Land Use Category	DUE Factor	Development Unit
Single-Family Residential	1.0	Dwelling Unit
Multifamily Residential	11.7	Acre
Commercial/Office (LC)	2.5	Acre
Travel Commercial (TC)	3.0	Acre
Industrial Intensive (MP)	3.5	Acre

**16.86.130 Credit for construction of transportation facilities.**

A. Where a transportation facility is proposed for construction by the property owner within six (6) months prior to the beginning of the fiscal year for which it is scheduled for construction in the capital improvement plan/program of the PFFP – development fee program and after that time, the Director at his or her discretion may either:

1. Enter into a credit agreement with the property owner pursuant to this section; or
2. Enter into a reimbursement agreement with the property owner pursuant to EGMC Section 16.86.140.

B. Upon application by the property owner or his authorized agent, the Director may authorize the construction of any transportation facilities, or portions thereof, within six (6) months prior to the beginning of the fiscal year for which it is scheduled for construction and after that time as designated in the capital improvement plan/program of the PFFP – development fee program in lieu of all or a portion of the transportation facilities development fee required by this chapter. If so authorized, the credit to be provided to the property owner shall be equal to the estimated cost of the facility as set forth in the then current PFFP – development fee program, including, but not limited to,

unit prices, quantities and project descriptions. The construction of any facility authorized by this section must be accepted by the Department, or the property owner must post security for the complete performance of the construction in a form acceptable to the Director and the City Attorney, prior to credit being given and issuance of any of the approvals set forth in EGMC Section 16.86.080.

C. Where the amount of the credit is less than the amount of the otherwise applicable transportation facilities development fee, the property owner must pay the difference as set forth in EGMC Section 16.86.080.

D. Where the amount of the credit is greater than the amount of the development fee, the property owner shall be paid the difference only from the Laguna Stonelake transportation fund within a reasonable time after the project is accepted by the Department and shall be entered into a reimbursement agreement pursuant to EGMC Section 16.86.140.

**16.86.140 Reimbursement for construction of transportation facilities in advance of the PFFP – Development fee program schedule.**

A. Upon application by the property owner or his authorized agent, the Director may enter into a reimbursement agreement for the construction of any transportation facilities, or portions thereof, as designated in the PFFP – development fee program. The agreement shall set forth the amount to be reimbursed, the time and manner in which payments are to be made, and shall require reimbursement only from the Laguna Stonelake transportation fund.

B. The amount of reimbursement shall be the estimated cost of the facility as set forth in the PFFP development fee program in effect at the time the reimbursement agreement is approved. The time of reimbursement shall be the end of the fiscal year in which the facility is scheduled for construction in the PFFP – development fee program.

C. By entering into a reimbursement agreement, a property owner is not relieved of the obligation to pay the development fees in the manner and amount specified by this chapter.

D. If the Director enters into an agreement authorized by subsection (A) of this section, or credit agreement as authorized by EGMC Section 16.86.130(A), the agreement shall provide that:

1. The general fund of the City is not liable for payment of any obligations arising from the agreement;
2. The credit or taxing power of the City is not pledged for the payment of any obligations arising from the agreement;

3. The landowner shall not compel the exercise of the City taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement; and

4. The obligation arising from the agreement is not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues and is payable only from the development fees deposited in the Laguna Stonelake transportation fund.

**16.86.150 Reimbursement/credit for construction of park facilities.**

A. Upon application by the property owner or his authorized agent, the Cosumnes Community Services District (Cosumnes CSD) may authorize the reimbursement or credit for the construction or funding of park facilities, or portions thereof, for the actual cost of construction or the estimated cost of facilities set forth in the PFFP – development fee program, whichever is less, in lieu of all or a portion of the park facilities development fee required by this chapter.

B. Reimbursement or credit shall only be given for the park facilities identified in the PFFP – development fee program.

C. Reimbursement or credit shall be given pursuant to the park development agreement between the Laguna Stonelake LLC and the Cosumnes CSD.

**16.86.160 Annual program fee adjustment.**

In January of each calendar year, the program fee for each type of development in each fee category will automatically be adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the 20-city CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

**16.86.170 Alternative method and compliance with other laws.**

A. This chapter is intended to establish a supplemental method for funding the estimated cost of certain facilities the need for which will be generated by the level and type of development proposed in the Laguna Stonelake community plan. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones, on development within the PFFP area, but shall be in addition to any other requirements which the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the PFFP area pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to:

1. The City of Elk Grove Public Works Department Improvement Standards;
  2. The Quimby Act (Section 66477 et seq. of the Government Code) and implementing ordinances (EGMC Chapter 22.40);
  3. School impact fees (Sections 65970 et seq. of the Government Code) and implementing ordinances; and County Drainage Fees (County Water Agency Ordinance No. 1). Any credits or repayments pursuant to EGMC Sections 16.86.130, 16.86.140, and 16.86.150 shall not include the funding, construction or dedications described in this section.
- B. The construction of facilities by a private owner pursuant to EGMC Sections 16.86.130, 16.86.140 or 16.86.150 shall be performed and contracted for only as required by law, including, but not limited to, compliance with the Agency's improvement standards, and requirements for public works, if applicable to the particular facility.

## **Chapter 16.90**

### **CONSTRUCTION PERMIT FEES**

Sections:

16.90.010 Intent.

16.90.020 Permit fees.

16.90.030 Fee schedule.

#### **16.90.010 Intent.**

It is the intent of the City Council to group the fees required for various permits, associated with the construction process, into one fee schedule as contained in this chapter.

#### **16.90.020 Permit fees.**

A. The fee for each permit shall be as prescribed in EGMC Section 16.90.030.

B. The determination of value or valuation under any of the provisions of this code shall be made by the Building Official. The value to be used in computing the permit fee shall be the total value of all construction work for which the permit is issued as well as all

finish work, painting, roofing, electrical, plumbing, heating, air-conditioning, elevators, fire extinguishing systems, and any other permanent equipment.

C. The new permit fee schedule will apply to all permit applications received on or after the effective date of the new permit fee ordinance.

Plans submitted for plan review prior to the effective date of the new permit fee ordinance may be issued under the old permit fee schedule for ninety (90) days. After the ninety (90) day grace period, all permits will be issued under the new permit fee schedule.

**16.90.030 Fee schedule.**

The construction permit fee schedule shall be as follows:

A. Permit Fees.\* New buildings, additions, alterations, fill-ins, tenant improvements, remodels, fire repairs, solar, and other structures requiring a plan review.

\* Total permit fee.

1. Permit Fees for New Group R, Division 3 and U or S Occupancies Accessory to Residential/Agricultural Use.

Total Valuation	Fee
\$1.00 to 2,000	\$235.00
\$2,001 and greater	\$235.00 + (.0066 x valuation* exceeding \$2,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

2. Permit Fees for the Remodel of and/or Additions to Group R, Division 3 and U or S Occupancies Accessory to Residential/Agricultural Use.

Total Valuation	Fee
\$1.00 to 2,000	\$164.00
\$2,001 to 20,000	\$164.00 + (.0160 x valuation* \$2,000 to \$20,000)
\$20,001 and greater	\$452.00 + (.0080 x valuation* exceeding \$20,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

3. Permit Fees for Buildings Other Than Group R, Division 3 and U or S Occupancies Accessory to Residential/Agricultural Use.

Total Valuation	Fee
\$1.00 to 1,000	\$290.00
\$1,001 to 2,000	\$472.00
\$2,001 to 50,000	\$472.00 + (0.018 x valuation* \$2,001 to \$50,000)
\$50,001 to 500,000	\$1,336 + (0.015 x valuation* \$50,001 to \$500,000)
\$500,001 and greater	\$8,086 + (0.008 x valuation* exceeding \$500,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

B. Plan Review Fee. Upon submittal of a plan for plan review, a plan review fee, forty (40%) percent of the total permit fee, shall be collected. When the permit is issued, the balance of the total permit fee is due.

C. Permit Fees.

\* Total permit fee.

1. Carports, Decks, Patio Covers, Fences, Reroof, Demolitions, Fire Repairs, Solar, and Other Structures not Requiring a Plan Review.

Total Valuation	Fee
\$1.00 to 1,000	\$56.00
\$1,001 to 10,000	\$56.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$200.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

2. Carports, Decks, Patio Covers, Fences, Private Garages, Roof Repitches, Fire Repairs, Solar, and Other Structures Requiring a Minimal Plan Review.

Total Valuation	Fee
\$1.00 to 1,000	\$111.00
\$1,001 to 10,000	\$111.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$255.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

D. Miscellaneous Plumbing Permit Fees.

Total Valuation	Fee
\$1.00 to 1,000	\$56.00
\$1,001 to 10,000	\$56.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$200.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

E. Miscellaneous Electrical Permit Fees.

Total Valuation	Fee
\$1.00 to 1,000	\$56.00
\$1,001 to 10,000	\$56.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$200.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

F. Miscellaneous Mechanical Permit Fees.

Total Valuation	Fee
\$1.00 to 1,000	\$56.00
\$1,001 to 10,000	\$56.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$200.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

G. Sign Permit Fees.\*

\* Total permit fee.

1. Permit Fee for Illuminated Signs (All Types).

Total Valuation	Fee
\$1.00 to 1,000	\$111.00
\$1,001 to 10,000	\$111.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$255.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.



2. Permit Fee for Nonilluminated Signs (Free Standing).

Total Valuation	Fee
\$1.00 to 1,000	\$56.00
\$1,001 and greater	\$56.00 + (.0080 x valuation* exceeding \$1,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

3. Permit Fee for Nonilluminated Signs (Wall/Appendage).

Total Valuation	Fee
\$1.00 to 1,000	\$41.00
\$1,001 and greater	\$41.00 + (.0080 x valuation* exceeding \$1,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

H. Swimming Pool/Spa Permit Fees.\*

\* Total permit fee.

1. Permit Fee for Private Pool.

Total Valuation	Fee
\$1.00 to 1,000	\$115.00
\$1,001 to 10,000	\$115.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$259.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

2. Permit Fee for Public Pool.

Total Valuation	Fee
\$1.00 to 1,000	\$236.00
\$1,001 to 10,000	\$236.00 + (.0160 x valuation* \$1,000 to \$10,000)
\$10,001 and greater	\$380.00 + (.0080 x valuation* exceeding \$10,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

3. Permit Fee for Separate Private or Public Spa.

Total Valuation	Fee
\$1.00 to 2,000	\$211.00
\$2,001 and greater	\$211.00 + (.0080 x valuation* exceeding \$2,000)

\* Rounded up to the next multiple of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars.

I. Mobile Home Installation Permit Fees.

1. Application filing fee: Twenty and no/100<sup>ths</sup> (\$20.00) Dollars;
2. Installation permit fee: One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars, provided the inspection is not more than one hour, plus Thirty and no/100<sup>ths</sup> (\$30.00) Dollars for each thirty (30) minutes or fraction in excess of one (1) hour;
3. Reinspection fee: Sixty and no/100<sup>ths</sup> (\$60.00) Dollars, provided the reinspection is not more than one (1) hour, plus Thirty and no/100<sup>ths</sup> (\$30.00) Dollars for each thirty (30) minutes or fractional part in excess of one (1) hour.

J. Temporary Mobile Home or Travel Trailer. Permit fees for owner-occupied mobile home or travel trailer used temporarily during dwelling construction:

1. Application filing fee: Twenty and no/100<sup>ths</sup> (\$20.00) Dollars;
2. Installation permit fee: One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars, provided the inspection is not more than one (1) hour, plus Thirty and no/100<sup>ths</sup> (\$30.00) Dollars for each thirty (30) minutes or fractional part in excess of one (1) hour;
3. Reinspection fee: Sixty and no/100<sup>ths</sup> (\$60.00) Dollars, provided the reinspection is not more than one (1) hour, plus Thirty and no/100<sup>ths</sup> (\$30.00) Dollars for each thirty (30) minutes or fractional part in excess of one (1) hour.

K. Building Compliance Inspection Fee. Building compliance inspection fees shall be a minimum of One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars, not to exceed Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars, based on the extent and type of inspection, to be determined by the Building Official.

L. Inspection of a Building to be Moved – Fee.

1. Application and inspection fee: Two Hundred Fifty and no/100<sup>ths</sup> (\$250.00) Dollars;
2. When the application indicates that the building is to be moved from a location outside of the City of Elk Grove, the applicant shall pay an additional fee based on Fifty and no/100<sup>ths</sup> (\$50.00) Dollars per hour plus Zero and 30/100<sup>ths</sup> (\$0.30) Cents per mile to defray costs accrued outside of the City of Elk Grove.

M. Other Inspections and Fees.

1. Issuance of each on-site permit Twenty-Five and no/100<sup>ths</sup> (\$25.00) Dollars;
2. Issuance of each supplemental permit: Seventy-Five and no/100<sup>ths</sup> (\$75.00) Dollars;
3. Inspection outside of normal business hours:\* See current labor rate schedule;

\* Minimum charge: Three (3) hours.

4. Inspections for which no fee is specifically indicated: See current labor rate schedule;

5. Each reinspection: One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars;

6. Administrative fee, temporary certificate of occupancy: One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars;

7. Issuance of duplicate certificate of occupancy: Forty and no/100<sup>ths</sup> (\$40.00) Dollars;

8. Permit research letter: See current labor rate schedule;

9. Additional plan review required by changes, additions, or revisions to approved plans:\* See current labor rate schedule;

10. Plan review for miscellaneous permits:\* See current labor rate schedule;

\* Minimum charge: One-half (0.5) hour.

11. Boundary adjustment reviews:\* Directly billed based upon labor charges;

\* Minimum charge: One-half (0.5) hour.

12. Preapplication building reviews: Directly billed based upon labor charges;

13. Unfinalized permit investigations:\* Directly billed based upon labor charges;

\* Minimum charge: One-half (0.5) hour.

14. Expedited plan reviews: Normal plan review fees plus costs or directly billed based upon labor charges;

15. UBC lot line waiver: Directly billed based upon labor charges;

16. Filing fee for Building Board of Appeals: Two Hundred and no/100<sup>ths</sup> (\$200.00) Dollars;

17. All provisions related to residential photovoltaic solar system permit fees as found in EGMC Section 16.90.030 are suspended for the 2007 – 2009 calendar years.

## **Chapter 16.91**

### **EASTERN ELK GROVE PARK FEE**

#### Sections:

16.91.010 Purpose.

16.91.020 Definitions.

16.91.030 Establishment of Eastern Elk Grove park facilities fund.

16.91.040 Establishment of Eastern Elk Grove park fee program administration account.

16.91.050 Adoption of development fee.

16.91.060 Calculation of Eastern Elk Grove park fee.

16.91.070 Payment of development fees.

16.91.080 Fee credits and reimbursements.

16.91.090 Compliance with other laws.

#### **16.91.010 Purpose.**

A. The City's General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for urban expansion.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing fees to fund the cost of certain park protection facilities the need for which is generated by the type and level of development designated in the General Plan.

D. The Eastern Elk Grove park fee will apply only to all territory located in the area of the City east of State Route 99.

E. The City Council hereby determines that payment of the Eastern Elk Grove park fee will be collected for public facilities for which an account has been established hereby

and that are included within the capital improvement plan of the Cosumnes Community Services District as described in the nexus study.

**16.91.020 Definitions.**

A. "Age-restricted unit" means a unit in a senior citizen housing development, as described in Section 51.3 of the California Civil Code, the age restrictions with respect to the occupancy of which are contained in recorded covenants, conditions, and restrictions, or another recorded instrument approved by the City Attorney, and provide that they remain in effect for at least forty (40) years.

B. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.

C. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

D. "Cosumnes CSD" means the Cosumnes Community Services District (formerly known as the Elk Grove Community Services District) or its successor agency as provider of parks in Eastern Elk Grove.

E. "Development fee" means the Eastern Elk Grove park fee, the fee described in this chapter to be collected upon the approval of building permits within areas of the City east of State Route 99.

F. "Eastern Elk Grove park fee program" means the program described in this chapter of levying, collecting, and administering of the development fee.

G. "Eastern Elk Grove park facilities fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.91.030.

H. "Eastern Elk Grove park fee administration account" means that special interest-bearing trust account established pursuant to EGMC Section 16.91.040.

I. "Facilities" means the facilities financed by the development fee.

J. "Fee resolution" means the resolution adopted by the City Council that adopts, levies, and establishes the amount of the development fee.

K. "Finance Director" means the Finance Director of the City of Elk Grove.

L. "Land use category" means a single-family, multifamily, or nonresidential land use as further defined in the fee resolution.

M. "Nexus study" means the Elk Grove Community Services District Eastern Elk Grove Park and Fire Facilities Fee Nexus Study, dated February 13, 2004.

N. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

O. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobile homes.

**16.91.030 Establishment of Eastern Elk Grove park facilities fund.**

The Finance Director shall create a special interest-bearing trust fund entitled the Eastern Elk Grove park facilities fund. That component of the development fee that is collected for park facilities shall be placed in the fund and shall be expended by the City or transferred to the Cosumnes CSD for expenditure solely to pay the costs of park facilities identified in the nexus study. Within the fund there is hereby created an account into which shall be deposited that portion of the development fee that is collected for administrative costs that is to be transferred for the use of the Cosumnes CSD.

**16.91.040 Establishment of Eastern Elk Grove park fee program administration account.**

The Finance Director shall create a special interest-bearing trust account (within the Eastern Elk Grove park fund) entitled the Eastern Elk Grove park fee program administration account. That component of the development fee that is collected for the City's administrative costs as described in this chapter shall be deposited in the account and shall be expended by the City solely to pay the costs of administering the Eastern Elk Grove park fee program.

**16.91.050 Adoption of development fee.**

The City Council shall adopt, levy, and establish the amount of the development fee by resolution.

#### **16.91.060 Calculation of Eastern Elk Grove park fee.**

A. For residential development, the Eastern Elk Grove park fee shall be calculated by multiplying the number of units per land use category by a cost per unit factor as identified in the fee resolution.

B. For nonresidential development, the Eastern Elk Grove park fee shall be calculated by multiplying the number of building square feet per land use category by a cost per square foot factor as identified in the fee resolution.

C. For the purpose of calculating the Eastern Elk Grove park fee for land use categories not described in this chapter or the fee resolution, the Finance Director, in conjunction with the Cosumnes CSD, is hereby authorized to determine the land use category that corresponds most directly to the land use. Alternatively, the Finance Director, in conjunction with the Cosumnes CSD, may determine that no land use category corresponds and determine the Eastern Elk Grove park fee.

D. In January of each calendar year, the amount of the Eastern Elk Grove park fee shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index (CCI) and the change in the 20-City CCI as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year.

#### **16.91.070 Payment of development fees.**

The development fee imposed pursuant to this chapter shall be paid by the property owner to the City, in an amount established by the fee resolution and calculated as further described in EGMC Section 16.91.060. The fee shall be both calculated and paid upon the issuance of building permits.

#### **16.91.080 Fee credits and reimbursements.**

A. Eligibility. Fee credits and reimbursements will be available to developers who fund construction of eligible park facilities. The Cosumnes CSD will determine which facilities will be eligible for developers to construct. Facilities must meet Cosumnes CSD standards for acquisition projects in order to be eligible for fee credits or reimbursements. Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

B. Amount of Fee Credits/Reimbursements. Developers will be eligible for fee credits up to one hundred (100%) percent of the Eastern Elk Grove park fee, excluding the administration fee portion. Fee credits/reimbursements will be available for the facility cost up to the lesser of (1) the cost shown in the nexus study and (2) actual construction

cost of the eligible facilities. Fee credits/reimbursements will be adjusted each January 1st by the change in the average of the San Francisco and 20-City Construction Cost Indexes as reported in the Engineering News Record for the twelve (12) month period ending October of the prior year. Once fee credits have been determined, they will be used at the time the respective fees would be due. The Cosumnes CSD will be responsible for determining the fee credit amount and will provide this information to the City.

C. Timing and Allocation of Fee Credits. Once all criteria are met, fee credits may be taken against fees when payable at building permit issuance. To obtain fee credits, the park facilities must meet all Cosumnes CSD standards and criteria, and developers must apply to the Cosumnes CSD before payment of fees. The Cosumnes CSD maintains the flexibility to allocate fee credits in a manner it chooses. Fee credits granted shall be on a per-unit basis for residential development and a per-square-foot basis for nonresidential development projects.

D. Timing and Allocation of Reimbursements. Reimbursements will be due to developers who finance facilities in excess of their fair share of the cost of the park facilities. In such a case, developers would first obtain fee credits up to their fair share cost requirement for a facility and then await reimbursement from fee revenue collections from other fee payers. Reimbursement priority will be determined on a first-in and first-out basis. When funds are available, and no high-priority projects need to be financed, reimbursements will be paid to the first developer waiting for reimbursement. Once that developer is paid in full, the next developer awaiting reimbursement will start to be repaid in full. To obtain reimbursements, developers must enter into a reimbursement agreement with the Cosumnes CSD. Reimbursements will be paid only after Cosumnes CSD acceptance of park facilities. Reimbursements are an obligation payable only from the Eastern Elk Grove park fee program funds and not an obligation of the Cosumnes CSD general fund or the City.

#### **16.91.090 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones, on development within the City, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City of Elk Grove Public Works



Department Improvement Standards. Any credits or repayments pursuant to this chapter shall not include the funding, construction or dedications described in this section.

## **Chapter 16.95**

### **DEVELOPMENT IMPACT FEES FOR ROADWAY FACILITIES**

Sections:

16.95.010 Purpose.

16.95.020 Definitions.

16.95.030 Establishment of the City of Elk Grove roadway fund.

16.95.050 Payment of development fees.

16.95.060 Adoption of schedule of roadway fees.

16.95.070 Establishment of development fee.

16.95.080 Calculation of roadway fee.

16.95.090 Credit/reimbursement for construction of public facilities.

16.95.100 Compliance with other laws.

16.95.120 In lieu levy.

#### **16.95.010 Purpose.**

A. The City of Elk Grove General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities.

B. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for policies for supporting funding of public facilities.

C. The purpose of this chapter is to implement the General Plan requirements set forth in subsections (A) and (B) of this section and to use the authority in Article XI, Section 7

of the California Constitution by imposing development fees via a roadway fee program to fund the cost of certain roadway facilities.

**16.95.020 Definitions.**

A. "Building permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.

B. "City of Elk Grove roadway fund" means that special interest-bearing trust fund established pursuant to EGMC Section 16.95.030.

C. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

D. "Department" means the Public Works Department of the City of Elk Grove.

E. "Development fee" or "roadway fee" means the City roadway fee, the fee levied by this chapter upon the approval of building permits within City boundaries.

F. "Engineer" means the City Engineer of the City of Elk Grove.

G. "Facilities" means the roadway facilities financed by the roadway fee.

H. "Fee resolution" means the resolution adopted by the City Council that establishes the amount of the roadway fee.

I. "Finance Director" means the Finance Director of the City of Elk Grove.

J. "Land use category" means a single-family, multifamily, or commercial use as further defined in the fee resolution.

K. "Nonresidential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, triplexes, quadplexes, town homes, condominiums, apartments, manufactured homes, mobile homes, gas stations, and hotels/motels.

L. "Permanent roadway fee effective date" means the date upon which the roadway fee becomes effective other than on an interim basis

M. "Residential development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-

family attached homes, duplexes, triplexes, quadplexes, town homes, condominiums, apartments, manufactured homes and mobile homes.

**16.95.030 Establishment of the City of Elk Grove roadway fund.**

There is hereby created by the Finance Director a special interest-bearing trust fund entitled the City of Elk Grove roadway fund. All roadway development fees collected pursuant to this chapter shall be placed in said fund and shall be expended by the City of Elk Grove solely to pay the costs of roadway facilities, interest for borrowed money, formulation and updating the roadway fee program, and the administration of the roadway fee program.

**16.95.050 Payment of development fees.**

The development fees imposed pursuant to this chapter shall be paid by the property owner to the City, in an amount calculated pursuant to EGMC Section 16.95.080. The fees shall be both calculated and paid upon the issuance of building permits.

**16.95.060 Adoption of schedule of roadway fees.**

The City Council shall establish the amount of the roadway fee by resolution.

**16.95.070 Establishment of development fee.**

A development fee is hereby established for the purpose of funding roadway facilities, interest on borrowed money, formulating and updating the roadway fee program, and the costs of administering the roadway fee program.

**16.95.080 Calculation of roadway fee.**

A. For residential development, the roadway fee shall be calculated by multiplying the number of units per land use category by a dwelling unit equivalent factor as identified in the roadway fee program.

B. For nonresidential development, the roadway fee shall be calculated by multiplying the number of building square feet per land use category by a dwelling unit equivalent factor as identified in the roadway fee program.

C. For a gas station, the roadway fee shall be calculated by multiplying the number of vehicle fueling positions by a dwelling unit equivalent factor as identified in the roadway fee program.

D. For a hotel or motel, the roadway fee shall be calculated by multiplying the number of guest rooms by a dwelling unit equivalent factor as identified in the roadway fee program.

E. For the purpose of calculating the roadway fee for land use categories not included in the roadway fee program, the Finance Director is hereby authorized to determine the land use category, which corresponds most directly to the land use. Alternatively, the Finance Director, in conjunction with the City Engineer, may determine that no land use category corresponds and determine the roadway fee. Said roadway fee will be determined using the applicable trip generation factors as found in the Institute of Transportation Engineers Trip Generation manual.

F. In January of each calendar year, the roadway fee shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index and the 20-city Construction Cost Index as reported in the Engineering News Record for the twelve (12) month period ending October 31st of the prior year.

**16.95.090 Credit/reimbursement for construction of public facilities.**

**A. General Provisions.**

1. Fee credits and reimbursements will be available as part of the roadway fee program. Facilities must meet City standards for acquisition projects in order to be eligible for fee credits or reimbursements. All construction contracts, construction work, and requests for reimbursement must be performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities." Developers will be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

**B. Timing and Amount of Fee Credits/Reimbursements.**

1. Fee credits and reimbursements will only be given to fully completed projects that are identified in the capital improvement plan as a roadway fee program facility. Developers may only seek fee credits or reimbursements for such projects from the roadway fee program. In order to obtain fee credits for a single-family project, a developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to lots within a final subdivision map, not a large lot map. In order to obtain fee credits for a multifamily or nonresidential project, the developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multifamily project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multifamily or nonresidential projects with mutual agreement between the developer and the City. If all criteria for receiving a fee credit are met as outlined in the credit agreement, the developer may take the credit against the roadway fee at the issuance of a building permit.

2. Developers must enter into a reimbursement agreement with the City (prior to construction) if they wish to be reimbursed for a facility. The priority of the reimbursement will be determined by the Finance Director, and the reimbursement will only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the roadway fee program and not an obligation of the general fund.

3. Developers will be eligible for fee credits and reimbursements up to, but not exceeding, one hundred (100%) percent of the roadway fee, excluding any administration costs.

4. The City will reimburse the developer for acquisition or installation of the roadway fee program improvements based on the lesser of: (a) the actual construction cost of the eligible facilities, as determined in the sole discretion of the City, through its review of the construction contract, plus an allowance for soft costs associated with the actual construction costs, as determined by the City, or (b) the total of allowable costs, based on the cost schedules set forth in the roadway fee program (without interest).

5. In January of each calendar year, the roadway fee shall be automatically adjusted by the average of the change in the San Francisco Construction Cost Index and the 20-city Construction Cost Index as reported in the Engineering News Record for the twelve (12) month period ending October 31st of the prior year.

#### **16.95.100 Compliance with other laws.**

This chapter is intended to establish a method for funding the cost of certain facilities the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones, on development within the City area, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City area pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to: The City of Elk Grove Public Works Department Improvement Standards. Any credits or repayments pursuant to this chapter shall not include the funding, construction or dedications described in this section.

#### **16.95.120 In lieu levy.**

The payment and administration of roadway fees levied pursuant to this chapter will be in lieu of all other roadway fees paid and administered pursuant to EGMC Chapter

16.86, Laguna Stonelake Public Facilities Financing Plan Development Impact Fee Program. The citywide roadway fee program serves as the successor fee program to the Stonelake roadway fee.

## **Chapter 16.96 Development Impact Fees for Measure A Transportation Improvements For Citywide Benefit District**

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## **Article I. General**

### **16.96.010 Purpose.**

This chapter is adopted pursuant to the general powers reserved to the City under Government Code Section 66000 et seq. and as allowed by Measure A for the purpose of authorizing certain development impact fees, as described in public facility financing plans, expenditure plans and the nexus studies as referenced herein, to be assessed upon the owners of certain residential and nonresidential property as described in this chapter and which is located within the City. The fees herein adopted shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to design, construct, install or acquire public facilities required to meet the needs of, and address the transportation impacts caused by, such development activity. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by constructing, installing and acquiring public facilities necessitated by development in the City. Furthermore, it is the intent and purpose of the City to allow the development within its corporate limits on the condition that landowners pay the applicable costs of such public facilities and that such costs shall not be or become a responsibility of any other City fund, including, without limitation, the City's general fund.

### **16.96.020 Definitions.**

A. Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this chapter:

1. "Assessment district policy manual" means the document entitled, "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" on file with the City of Elk Grove Public Works, as such document or its title may be amended from time to time.

2. "Automatic annual adjustment" means the automatic annual adjustment of development impact fees based on the inflation factors described in Section 16.96.130 of this chapter.

3. "City Code" means the Municipal Code of the City of Elk Grove

4. "Citywide benefit district area" means the real property located within the corporate limits of the City, and as said limits may be adjusted from time to time.

5. "Development" means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.

6. "Development project" shall have the same meaning as defined by subsection (a) of Government Code Section 66000, as such section may be amended from time to time.

7. "Dwelling unit" means any room or group of rooms located within a dwelling and forming a single unit with the facilities which are used or intended to be used for living, sleeping, cooking, or eating excepting therefrom any unit rented or leased for temporary residency, such as a motel and hotel room.

8. "Fee" and "impact fee" and "development impact fee" means the monetary exaction as defined by subsection (b) of Government Code Section 66000, as such section may be amended from time to time, and shall include, but not be limited to, the fees established pursuant to this chapter.

9. "Fee resolution" means any resolution adopted by the City Council which implements the provisions of this chapter, including, without limitation, the setting of the amounts of the various fees established hereby and the adoption of provisions for credits, reimbursements and deferral relating to such fees.

10. "Government Code" means the Government Code of the state of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

11. "Health and Safety Code" means the Health and Safety Code of the state of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

12. "Industrial use" means any Development Project that involves manufacturing, transportation, logistics or similar uses.



13. "Low income" and "very low income" housing is as defined in Health and Safety Code Sections 50079.5 and 50105, respectively.

14. "Measure A" means Ordinance No. 04-01 adopted by the Sacramento Transportation Authority on July 29, 2004, which established the Sacramento Countywide Transportation Mitigation Fee Program to be implemented by the County of Sacramento and each city within the county by April 1, 2009.

15. "Measure A administration fee" means the fee imposed by the City for the cost of collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee.

16. "Measure A development impact fee" means a development impact fee established to provide funding for public facilities to benefit new development within the City.

17. "Measure A expenditure plan" means the Sacramento County Transportation Expenditure Plan 2009-2039 dated June 10, 2004, as adopted by the Sacramento Transportation Authority under Ordinance No. 04-01, which specifies the allocation of Measure A sales taxes and Measure A development impact fees for specified public facilities.

18. "Measure A mitigation fee program" means the Sacramento Countywide Transportation Mitigation Fee Program as approved by the Sacramento Transportation Authority by Ordinance No. 04-01. It includes a technical amendment approved by STA on December 11, 2008.

19. "Measure A nexus study" means the Development Impact Fee Study dated June 2, 2006, as adopted by the Sacramento Transportation Authority by Resolution No. 06-0006.

20. "Multi-family residential use" means any Development Project that uses a single parcel for two or more dwelling units within one or more building(s) including, without limitation, duplexes, townhouses, condominiums and apartments.

21. "Office use" means any Development Project that involves business activities, associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal and medical offices, personal services, or similar uses, and religious centers. "Office Use" also includes any other commercial use not specifically listed in Section 2.1 of the Protocols Agreement that is not a retail or industrial use.

22. "Protocols Agreement" means the New Measure A Sacramento Countywide Transportation Mitigation Fee Program Agreement on Operating Protocols dated August 2008 with the Sacramento Transportation Authority, as approved by the Authority on

August 28, 2008, by Resolution No. 08-0001 and as approved by the City on January 14, 2009, by Resolution No. 2009-15.

23. "Public facilities" means the public improvements, public services and community amenities as defined by subsection (d) of Government Code Section 66000, as such section may be amended from time to time. The term "public facilities" only includes transportation improvements and infrastructure to be designed, constructed, installed and acquired to serve the specified benefit district area, as well as the transportation-related public service and community amenities to serve the specified benefit district area, which improvements and infrastructure are described in the applicable financing plan, expenditure plan, and/or nexus study (collectively "plan" or "study"). The costs of the design, construction, installation and acquisition of the specified public facilities, which are to be financed partially by the development impact fee program, is set forth within the plan or study. Where applicable under the plan or study, the term "public facilities" includes the acquisition of land relating to such improvements, infrastructure, public services and community amenities. The term "public facilities" also means a specific public improvement or infrastructure where the context requires a singular meaning.

24. "Retail use" means any Development Project that involves retailing of merchandise, generally without transformation, retail food services, and rendering services incidental to the sale of merchandise at a fixed point of sale.

25. "Senior residential use" means any Development Project that qualifies as housing for older persons pursuant to Government Code Section 12955.9

26. "Single family residential use" means any Development Project that uses a single family parcel for only one residential dwelling unit and includes any Development Project that involves one primary dwelling unit and one accessory dwelling unit on a single lot.

27. "STA" means the Sacramento Transportation Authority.

## **Article II. Establishment of Fees**

### **16.96.030 Adoption of new or amended reports.**

To implement the development impact fees established pursuant to the provisions of this chapter, the City Council may, by resolution, adopt new or amended versions of any of the studies, reports, plans, or projections on which the development impact fees are based, except in such cases where amendments to such studies reports, plans, or projections must be made by ordinance.

#### **16.96.040 Establishment of development impact fees.**

A. The following development impact fees are established pursuant to the provisions of this chapter to finance the cost of the following categories of public facilities required by development within the following specified benefit district areas:

1. Measure A benefit district.

a. Measure A Development Impact Fee. A development impact fee is established to provide funding for public facilities to serve the City, which facilities are described in the Measure A expenditure plan and the Measure A nexus study. The Measure A benefit district is the jurisdictional boundaries of the City, and as said boundary may be adjusted from time to time.

b. Measure A Administration Fee. An administrative fee is established to fund the City's cost to administer the Measure A development impact fee.

B. The City Council, by resolution, shall establish the specific initial and subsequent amounts of the foregoing fees pursuant to Section 16.96.060 of this chapter and make the additional findings required under Section 16.96.050 of this chapter in establishing said amounts of each fee. In addition, the City Council, by resolution, may adopt additional provisions, procedures and policies to implement the fees established by this chapter. The amounts of fees, provisions, procedures, and policies adopted by resolution pursuant to this subsection shall be consistent with the applicable financing plan, expenditure plan and/or nexus study as referenced in subsection A of this Section 16.96.040.

C. The City Council, by resolution, may establish new or additional components of the fees identified in subsection A of this Section 16.96.040 as are necessary to accommodate phasing and stages of the development of the specified benefit district areas, or as may be contemplated by future amendments to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of this Section 16.96.040.

#### **16.96.050 Additional findings to be made when establishing the amount of development impact fees.**

At the time it considers the amount of the fees established pursuant to Section 16.96.040 of this chapter or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in Section 16.96.130 of this chapter, the City Council shall adopt the amount of such fees if it makes the following findings in support of such fees:

A. A finding that such fees have been determined and calculated in the manner consistent with the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter; and

B. The following additional findings required by Section 66001 of the Government Code which demonstrate that there is a nexus between the public facilities for which such fees are imposed and the need for such public facilities created by the development of residential and nonresidential property within the specified benefit district areas upon which the fees are imposed:

1. Findings which identify the purpose of the fees;
2. Findings which identify the use to which the fees are to be put;
3. Findings which demonstrate that there is a reasonable relationship between the use of the fees and the type of development project on which the fees are imposed;
4. Findings which demonstrate that there is a reasonable relationship between the need for the public facilities to be financed by the fees and the type of development project on which the fee is to be imposed; and
5. Findings which demonstrate how there is a reasonable relationship between the amount of the fees and the cost of the public facilities, or portion of such public facilities, attributable to the development project on which the fees are imposed.

C. In making the findings pursuant to this Section 16.96.050 and any other findings, the City Council may consider all matters, whether offered orally or in writing, presented at the hearing or hearings conducted for the purpose of establishing or amending the fee, and any and all oral and written material presented to the City Council and Planning Commission in connection with the adoption, approval or amendment of the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

**16.96.060 Proceedings to establish the amount of development impact fees.**

A. At the time of setting the amount of the fees established pursuant to this chapter or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in Section 16.96.130 of this chapter, the City Council shall hold a public hearing on the proposed fees or proposed amendment of fees in the manner required by Section 66018 of the Government Code.

B. The effective date of any resolution adopted by the City Council which establishes or amends, as the case may be, the amount of the fees established pursuant to Section

16.96.040 of this chapter, shall be no sooner than 60 days following the final action on the adoption or amendment of the fee.

### **Article III. Fee Imposition**

#### **16.96.070 Imposition of development impact fees.**

A. The development impact fees established under this chapter shall be imposed on the following types of uses or development of real property located within the benefit district areas as referenced in subsection A of Section 16.96.040 of this chapter:

1. For nonresidential uses or development:

a. The construction on the property of a new building or structure;

b. The construction on the property of additions to an existing building or structure which results in the expansion in the size or use of such existing building or structure; or

c. The change in use of an existing building or structure on the property from a previous residential use to a nonresidential use, or from a previous nonresidential use to another nonresidential use, provided that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous residential or nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 16.96.130 of this chapter.

2. For residential uses or development:

a. The construction on the property of a new building or structure containing one or more dwelling units;

b. The construction on the property of alterations or additions to an existing building or structure which add one or more dwelling units to such existing building; or

c. The change in use of an existing building or structure on the property from a previous nonresidential use to a residential use, provided that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 16.96.130 of this chapter.

3. For nonresidential and residential uses or development within the same building or structure, the computation of fees as set out in Section 16.96.090 of this chapter shall apply.

B. Except as may be expressly provided in this chapter, no building permits or extension of permits relating to the activities described in subsections (A)(1) and (A)(2) of this Section 16.96.070 shall be granted unless and until the appropriate development impact fee or fees have been paid to the City in accordance with the provisions of this chapter, except that for residential developments under a fee payment contract as specified in Section 66007 of the Government Code, building permits may be issued but no final inspection or certificate of occupancy shall be granted unless and until the appropriate development impact fee or fees have been paid to the City. As provided in subsection (a) of Section 66007 of the Government Code, for a residential development that contains more than one dwelling unit, the fees may be paid on a pro rata basis for each dwelling unit at the time of the building permit.

C. Notwithstanding anything to the contrary set forth in subsection A of this Section 16.96.070 or in any other provision in this chapter, the development impact fees established pursuant to this chapter shall apply to any development project that has heretofore either received a tentative map approval or other approval or permit, whether discretionary or nondiscretionary, or is subject to a development agreement or other agreement between the landowner and City that provides for payment of one or more fees established under this chapter.

#### **16.96.080 Exemptions.**

A. The following shall be exempted from payment of the fees established by this chapter:

1. Alterations, renovations or expansion of an existing residential structure where no additional dwelling units are created and the use is not changed;
2. The replacement of a destroyed or partially destroyed or damaged structure with a new structure of the same size and use;
3. Construction, alteration, renovation or expansion of a new or existing residential, or residential/retail mixed use, structure owned by the Capitol Area Development Authority, or its successor(s) in interest;
4. Agreements entered into pursuant to Section 65865 of the Government Code (“development agreement”) unless the development agreement expressly provides for the payment of one of more fees established under this chapter. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, the development agreement must have been approved prior to April 1, 2009 and the exemption is invalid if the term of that development agreement is extended after April 1, 2009.

5. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, a vesting tentative map authorized under Section 66498.1 of the Government Code if the map application was deemed complete prior to April 1, 2009; and

6. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, low and very low income housing as defined in Health and Safety Code Sections 50079.5 and 50105, respectively.

B. Any claim of exemption with respect to the fees established by this chapter shall be made no later than the time for application for fee adjustment pursuant to Section 16.96.150 of this chapter.

#### **Article IV. Computation and Time of Payment of Fees**

##### **16.96.090 Computation of fees.**

The methodologies set forth in the financing plan, expenditure plan and/or nexus study referenced under subsection A of Section 16.96.040 of this chapter shall be used as the basis to set the amount of fees pursuant to any resolution referenced under subsection B of Section 16.96.040 of this chapter. The amount of fees due from any landowner shall be calculated from the actual uses of land proposed by the landowner unless otherwise provided in any resolution referenced under subsection B of Section 16.96.040 of this chapter. Applicants for building or other development permits shall include plans and calculations prepared by the applicant or applicant's agent, specifying data necessary to calculate development impact fees, including, without limitation, each proposed land use, the square footage of each use, and other relevant data as may be required by the Finance Director, or his or her authorized designee. All fees due under this chapter shall be determined and calculated by the Finance Director, or his or her authorized designee.

##### **16.96.100 Time of payment of fees.**

Except as otherwise provided in any resolution adopted by the City Council as provided under Section 16.96.110 and subsection B of Section 16.96.070 of this chapter relating to deferral of payment of fees, the fees established by this chapter shall be paid for the property on which a development project is proposed at the time of the issuance of any required building permit relating to such development. With respect to development projects completed or commenced prior to the effective date of this chapter and the effective date of any amendment, the Finance Director, or his or her authorized designee, may enter into agreements with landowners regarding the amount, time, and

manner of payment of fees under this chapter with respect to such development projects.

**16.96.110 Deferral of fees.**

The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding the deferral or other adjustment of the time of payment of the fees established under this chapter.

**16.96.120 Credits and reimbursements.**

A. The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding credits and reimbursements which may apply to the fees established by this chapter. Said policies, guidelines and procedures shall be subject to the terms of any written agreement entered into by the Finance Director, or his or her authorized designee, and any landowner or landowners within the benefit district area concerning credits against and reimbursement of fees established pursuant to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

B. All policies, guidelines and procedures regarding credits and reimbursements shall be consistent with the following:

1. The credits and reimbursements shall apply to fees owed (i) by landowners that have advanced funds for the planning, engineering, or construction of public facilities which otherwise would be paid from the revenue of the fees established by this chapter, and (ii) by landowners that planned, engineered or constructed public facilities or dedicated land for said facilities which otherwise would be paid for from the revenue of the fees established by this chapter.

2. The policies, guidelines and procedures shall provide for reimbursement to the City for administrative, planning, and engineering costs and other expenses relating to the implementation of the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

3. The credits and reimbursements may be transferable, in whole or in part, upon notice to the City in the form and in the manner specified by the City.

4. The amounts of credits and reimbursements shall be subject to adjustments for inflation calculated consistent with the provisions of Section 16.96.130 of this chapter, but shall not accrue interest.

5. Credit shall be given to the extent that public facilities are financed through the establishment of an assessment district or the use of other alternative financing



mechanisms. The cost of assessment district formation, administrative costs thereof, and bonding shall not be considered a reimbursable cost, or a cost eligible for credit.

6. The credits and reimbursements may be subject to annual review and adjustment to insure that funds are available to construct or acquire public facilities in a timely manner pursuant to the financing plan, expenditure plan and/or nexus study and to promote fairness and equity relating to credits and reimbursements.

7. The credits and reimbursements shall be given, consistent with the Elk Grove "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" for the construction of any public facilities (or a portion thereof) for which a fee established by this chapter may be expended and shall apply to the fees otherwise due and payable for the development project giving rise to the need for such public facilities.

8. The credits and reimbursements shall not be given for site-related improvements and dedications of land which are specifically required by the development project in order to serve it and which do not constitute a public facility for which a fee established by this chapter may be expended.

9. Any claim for credit or reimbursement shall be made no later than at the time of application for a building permit, even if payment of the fee is not due until final inspection or the certificate of occupancy. Any claim not made by or before the time of such application shall be deemed waived.

10. The sole source of the payment of a reimbursement shall be the revenue collected on the specific fee which could be expended on the public facilities to which the reimbursement relates, unless a credit or reimbursement agreement approved by the City Council specifically provides for an alternative source of reimbursement.

11. Credits and reimbursements may cease or be amended if the City Council, by resolution, determines that the same constitute threat(s) to the public health, welfare or safety.

C. The person seeking a credit or reimbursement, or both, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the Finance Director, or his or her authorized designee, to support the request for a credit or reimbursement. The Director shall determine the credit or reimbursement amount for construction of a specific public facility based upon either the foregoing landowner-provided cost estimates or upon alternative engineering criteria and construction cost estimates if the Director determines that such estimates submitted by the landowner are either unreliable or inaccurate. The Director shall determine whether the specific public facility is eligible for credit or reimbursement. Any decision

made by the Director pursuant to this section may be appealed to the City Council by the filing of a notice of appeal with the City Clerk within ten (10) days of the date of the Director's written decision. The City Council shall consider the appeal at a public hearing held within sixty (60) days after the filing of the notice of appeal. The decision of the City Council at said public hearing shall be final.

## **Article V. Adjustment of Fees**

### **16.96.130 Automatic annual adjustment.**

The fees established by this chapter shall be adjusted automatically to take into consideration construction cost inflation on July 1st of each fiscal year. The first fiscal year for which an adjustment shall occur shall be the fiscal year that includes July 1, 2010. The adjustment shall be made by a factor equal to the percentage increase, if any, of the index which the City Council adopts by resolution at time of establishment or amendment of the fees as provided under this chapter, which may include the following: The Construction Cost Index as published by Engineer News Record/McGraw-Hill Construction Weekly for either (i) the San Francisco (based on 1913 U.S. average = 100) during the twelve (12) months ending on the preceding March 1st, or (ii) the 20-City Construction Cost Index during the twelve (12) months ending on the preceding March 1st. This automatic annual adjustment shall not apply to those fees which are based on variable factors which themselves result in an automatic inflation adjustment, those which specifically indicate otherwise, or those which are governed by provisions of an agreement with the City expressly exempting such fees from the adjustment set forth under this Section 16.96.130.

### **16.96.140 Adjustment of fee by resolution.**

In addition to any automatic annual adjustment, the amount of the fees established by this chapter may be revised periodically, including, without limitation, upon the report and review provided for in the Code, by resolution of the City Council. Any action by the City Council to increase fees shall comply with the provisions of this chapter and Government Code Section 66018.

## **Article VI. Protest**

### **16.96.150 Protest of fees.**

A. A landowner subject to a fee established by this chapter may apply to the Finance Director, or his or her designee (for purposes of this section, the "Director"), for a

reduction, adjustment, or waiver of any one or more of the fees, or any portion thereof, based upon the absence of a reasonable relationship or nexus between the impacts of the landowner's development project and either the amount of the fee charged or the type of public facilities to be financed, or both. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver, and shall include any and all written materials which the landowner deems appropriate in support of the application.

B. The application shall be made in writing and filed with the Director at or before the time required for the filing of protests under Government Code Sections 66020 and 66021. For purposes of determining the applicable limitations period set forth in Government Code Section 66020, the date of the imposition of the fees under this chapter shall be the date of the earliest discretionary approval by the City of the subject development project. In the case of a development project where no discretionary approval is granted by the City, the date of the imposition of the fees under this chapter shall be the date of the earliest ministerial approval by the City of the subject development project. The time to file the application shall commence as of the date of City's written notice of the amount of the fees and the length of the protest period. The application shall be accompanied by the payment of a filing fee in an amount established by the City Council. The applicant shall be liable for the actual cost of the City in processing and ruling upon the application to the extent such cost exceeds the filing fee. Such excess amount may be deducted from any refund found due and owing to the applicant or may be added to the amount of development impact fees found to be due or owing from the applicant, as the case may be.

C. Notwithstanding the filing of an application and the pendency of any hearing or procedure under this Section 16.96.150, the landowner shall pay the development impact fees originally determined by the City in a timely manner pursuant to Section 16.96.100 of this chapter. Such payment shall be deemed to be a payment under protest pursuant to Government Code Sections 66020 and 66021.

D. It is the intent of this Section 16.96.150 that:

1. The Director may calculate a revised fee or require additional exactions where the impacts of a particular proposed development exceed the standards otherwise applicable in determining the public facilities necessitated by such development under the financing plan, expenditure plan and/or nexus study referenced in subsection A of Section 16.96.040 of this chapter; and

2. The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver may be made to one category of fees without affecting another.

E. The Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the Director shall be final and not appealable, except as provided in subsections H and I of this Section 16.96.150. The Director shall make his or her determination of the fee calculation within fifteen (15) days from the date of the informal hearing or the date on which said Director sets for the submission of additional engineering or other studies, other information, or additional calculations as found necessary by the Director during the course of the informal hearing. Applicant's failure to submit, on a timely basis, additional information requested by the Director may result in a denial of the application. The applicant shall be notified of the Director's decision, in writing, by the mailing of such decision by first-class mail, postage prepaid, to the address provided by the applicant.

F. The Director shall consider the following factors in his or her determination whether or not to approve an application:

1. The factors identified in Government Code Section 66001:

a. The purpose and proposed use of the fee;

b. The type of development involved, including factors such as differences in factors relevant to the calculation of the fee;

c. The relationship between the fee's use and the type of development involved;

d. The need or demand for the public facilities to be funded by the fee and the type of development involved; and

e. The amount of the fee and the portion of it attributable to the development involved.

2. The substance and nature of the evidence presented by the applicant.

3. The facts, findings and conclusions stated in the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter, including technical information, studies, and reports contained within and supporting said plans and study, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies and reports to demonstrate that the fee is inappropriate for the particular development involved.

G. If the application is granted, any change in use within the particular development involved in an application shall invalidate the reduction, adjustment, or waiver of the fee if such change in use would render the same inappropriate.

H. Within thirty (30) days of the date of the mailing of the decision of Director's decision, an applicant may appeal the Director's decision to the City Council, by filing a notice of appeal with the City Clerk. The provisions of Chapter 1.11 of the City Code shall govern the appeal to the City Council. In reaching its decision, the City Council or the appointed hearing examiner, as the case may be, shall consider the information contained in the application and the factors set forth in the subsection F of this Section 16.96.150. The decision on the appeal shall be mailed within ten (10) days following the hearing held pursuant to this Section 16.96.150 by first-class mail, postage prepaid, to the address provided by the applicant. The written decision shall be final and not appealable, except as provided in subsection I of this Section 16.96.150.

I. The protest procedures set forth in this Section 16.96.150 are administrative procedures which must be exhausted prior to the institution of any judicial proceeding concerning the fees protested.

## **Article VII. Creation and Use of Fund**

### **16.96.160 Creation of funds.**

A. The fees established and collected pursuant to this chapter shall be deposited in the following separate special funds and accounts created specifically to hold the revenue generated by such fees. Said collected fees shall be deposited, managed, and maintained pursuant to the provisions of Section 66006 of the Government Code. Monies within such fund may be used solely for the purposes set forth in Section 16.96.170 of this chapter. In this regard, the following special funds are created and established:

1. Measure A transportation impact fee fund for the deposit and collection of the Measure A transportation impact fee.
2. Measure A administration fee fund for the deposit and collection of the Measure A administration fee.

B. The City Manager, or his or her designee, shall have the authority to rename funds and create new funds, as such funds may become necessary or appropriate through the adoption of any fee resolution or through any amendment to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

**16.96.170 Use of funds.**

A. Funds collected from the fees established by this chapter and deposited in their respective special funds established under Section 16.96.160 of this chapter shall be used by the City, or by the Sacramento Transportation Authority or other entity if funds have been transferred to that entity, for the following purposes:

1. Payment of the actual costs of designing and constructing public facilities for which the fees may be expended, as described in the resolution or resolutions adopted pursuant to subsection B of Section 16.96.040 of this chapter;
2. Reimbursement for those public facilities already constructed as described in Section 16.96.120 of this chapter, or for the costs advanced, including, without limitation, design and administrative costs incurred with respect to a specific public facility and the preparation and implementation of the financing plan, expenditure plan and/or nexus study as described in Section 16.96.040 of this chapter;
3. Providing for reimbursements to landowners as described in Section 16.96.120 of this chapter;
4. Providing refunds;
5. Funding the City's administration of the fee program implemented by the provisions of this chapter; and
6. Using the same as may be permitted under Section 66006 of the Government Code.

B. The City Council, by resolution, may authorize the City Manager to make loans among the different funds and accounts established pursuant to this chapter to assure adequate cash flow for the construction and acquisition of public facilities on a timely basis so long as such inter-fund and/or inter-account loans do not unreasonably delay such construction and acquisition under the lending fund or account.

C. Unless used or refunded as otherwise permitted under this Section 16.96.170, monies, including any accrued interest, not assigned in any fiscal year shall be retained in the same fund or account until the next fiscal year.

D. The City Council, by resolution, may authorize the City Manager to transfer funds, including any accrued interest, to (1) another public entity with the authority to manage the fund pursuant to Section 66006 of the Government Code, or (2) to another public entity with the authority to undertake construction of the public facility funded by the fee.

**16.96.180 Refund of fees paid.**

If a building permit or, if appropriate, a grading permit, expires without commencement of construction, then the fee payer shall be entitled to a refund, without interest, of the fees paid as a condition for its issuance pursuant to compliance with Section 16.02.160 of the City Code; provided, however, that the portion of any fee revenue received by the City as reimbursement of its costs in administering the provisions of this chapter shall not be refunded. Failure to timely submit the required application for refund Code shall constitute an absolute waiver of any right to the refund.

**16.96.190 Other fee and dedication requirements.**

The provisions of this chapter shall not release any owner of residential or nonresidential property located within the benefit district area from the following obligations:

- A. Paying other applicable fees relating to development of property, including, without limitation, the application fees, processing fees, mitigation fees, and other development fees within the control of the City.
- B. Complying with any public facility requirements which are imposed pursuant to applicable law, including, without limitation, the provisions of the City Code.
- C. Complying with any requirement to dedicate property for public use pursuant to applicable law, including without limitation, the provisions of the City Code and the Government Code, at the time of approval of a tentative subdivision map, tentative master parcel map, certificate of compliance, building permit or other land use entitlement.
- D. Complying with any obligation to pay fees or exactions, or to comply with mitigation requirements for identified project-related environmental effects.

**Chapter 16.100**

**DEFERRAL OR WAIVER OF CERTAIN RESIDENTIAL IMPACT FEES**

Sections:

16.100.010 Title.

16.100.020 Purpose.

16.100.030 Applicable fee programs.

16.100.040 Definitions.

16.100.050 Fee deferral program.

16.100.060 Fee waiver program.

16.100.070 Deferral and waiver program.

16.100.080 Deferral, waiver and subordination agreements.

16.100.090 Fee waiver cap.

16.100.110 Interest.

16.100.120 Fee increases.

16.100.130 Fee deferral/waiver application and administrative processing fees.

16.100.140 Recordation costs.

**16.100.010 Title.**

This chapter shall be known and cited as the “Deferral or Waiver of Certain Residential Impact Fees.”

**16.100.020 Purpose.**

The City Council desires to encourage the construction of residential projects which will provide units with affordable rents or affordable housing costs for low and very low income households in the City of Elk Grove. The City Council finds that the early payment of certain impact fees for residential development creates a barrier to such development and desires, by the adoption of this chapter, to ease such barrier by deferring the time for payment of certain fees. To create further incentive to construct residential projects for very low income households the City Council also wishes to waive the payment of certain fees for a set number of units that will provide affordable rents or affordable housing costs for very low income households. The City Council finds that this deferral/waiver program is consistent with the policies and goals of the Housing Element of the General Plan of the City of Elk Grove and necessary for the health and welfare of the City’s residents.

**16.100.030 Applicable fee programs.**

Notwithstanding any other provision of this code, upon application and approval pursuant to EGMC Sections 16.100.050, 16.100.060 or 16.100.070, a qualified



residential project shall pay and the following fees shall be collected pursuant to the provisions of this chapter:

- A. Antelope Community Plan Area fees imposed pursuant to EGMC Chapter 16.80;
- B. Elk Grove/West Vineyard public facilities fees imposed pursuant to EGMC Chapter 16.82;
- C. Roadway and transit fees imposed pursuant to EGMC Chapter 16.85;
- D. Roadway and transit fees (excluding the administrative component) imposed pursuant to EGMC Chapter 16.87;
- E. Laguna area roadway development fees imposed pursuant to EGMC Chapter 16.85; and
- F. Laguna Stonelake development fees imposed pursuant to EGMC Chapter 16.86.

**16.100.040 Definitions.**

A. "Affordable housing cost" refers to the definition contained in Section 50052.5 of the Health and Safety Code, including, but not limited to, cost limits for low and very low income households in owner-occupied housing, as further defined in Volume 25 of the California Code of Regulations.

B. "Affordable rent" refers to the definition contained in Section 50023 of the Health and Safety Code, including, but not limited to, cost limits for low and very low income households in rental housing, as further defined in Volume 25 of the California Code of Regulations.

C. "Applicant" means the owner or owners of record of the real property for which a fee deferral or fee waiver or combination fee deferral and waiver is sought pursuant to this chapter.

D. "Commitment letter" refers to the notification issued by the Sacramento Housing and Redevelopment Agency (in response to its Notices of Funding Availability) of its commitment of construction and/or permanent loans for the purpose of financing the acquisition and construction of certain real property for the purposes of constructing a low or very low income residential development project or the notification issued by the Sacramento Housing and Redevelopment Agency verifying the projected costs, projected rents/sales price and affordability level, financing plan, financing gap, design, management and schedule of performance related to the construction of a low or very low income residential development project.

E. "Director" means the Public Works Director of the Public Works Department of the City of Elk Grove or his or her designee.

F. "Low income households" refers to the definition contained in Section 50079.5 of the Health and Safety Code, including, but not limited to, an income limit of eighty (80%) percent of area median income, adjusted for family size and revised annually.

G. "Qualified residential project" means a residential development project which has received written certification from SHRA as including at least ten (10%) percent of units with affordable rents or affordable housing costs for very low income households or at least forty-nine (49%) percent of units with affordable rents or affordable housing costs for low income households or which has received prior written certification from SHRA to include a combination of units with affordable rents or affordable housing for low and very low income households. Said written certification from SHRA must be obtained prior to application for deferral or waiver of fees pursuant to this chapter.

H. "Release from SHRA" means a written release, submitted from SHRA to a title company which (1) verifies that the buyer has met the income qualifications as set forth in this section or (2) verifies a multifamily residential project has received a State of California Tax Credit Allocation Committee final cost certification or similar certification from another financing entity or that the renter has met the income qualifications as set forth in this section.

I. "SHRA" means the Sacramento Housing and Redevelopment Agency.

J. "Very low income households" refers to the definition contained in Section 50105 of the Health and Safety Code, including, but not limited to, an income limit of fifty (50%) percent of area median income, adjusted for family size and revised annually.

**16.100.050 Fee deferral program.**

A. A qualified residential development project, as defined in EGMC Section 16.100.040(G), which has been certified by SHRA to include at least ten (10%) percent of units with affordable rents or affordable housing costs for very low income households or at least forty-nine (49%) percent of units with affordable rents or affordable housing costs for low income households may file an application with the Public Works Department to request deferral of any of those fees enumerated in EGMC Section 16.100.030. The specific percentage of low or very low income units, or both, to be offered in a residential development project must be certified by SHRA and included in the fee deferral application prior to acceptance thereof.

B. At the time of building permit issuance, the applicant shall pay ten (10%) percent of the amount of all fees included in the application request for each individual lot for which

a building permit is sought. Said payment shall be in addition to any and all required fee deferral application and administrative processing fees.

C. Security for the deferral of fees pursuant to this chapter shall be in the form of a promissory note secured by a deed of trust encumbering each parcel of record owned by the applicant that is included in the qualified residential project. The promissory note and deed of trust shall be in a form satisfactory to the Director and approved by the City Attorney. Said promissory note and deed of trust shall be recorded prior to issuance of building permits and shall be secondary only to deeds of trust associated with acquisition or construction financing.

D. All of the following requirements must be satisfied prior to approval of a fee deferral: (1) submittal to the Public Works Department of a complete application, including certification as a qualified residential project from SHRA and a preliminary title report; (2) deposit of all fees pursuant to EGMC Section 16.100.130; (3) recordation of security pursuant to subsection (C) of this section; and (4) execution and recordation of a deferral agreement pursuant to EGMC Section 16.100.080.

E. Fees that are approved for deferral for a single-family residential project pursuant to this chapter shall be due and payable at the close of escrow of each individual lot within the project. The maximum fee deferral period for any and all lots within a single-family residential project is fifteen (15) months from the date of execution of the fee deferral agreement. If not paid within the maximum fee deferral period, interest penalties shall apply pursuant to EGMC Section 16.100.110 and payment of the fees secured by the deed of trust shall be undertaken pursuant to the provisions set forth in the executed agreement entered into for the subject property pursuant to EGMC Section 16.100.080.

F. Fees that are approved for deferral for a multifamily residential project pursuant to this chapter shall be due and payable upon the close of permanent loan financing. The maximum fee deferral period is fifteen (15) months from the date of execution of the fee deferral agreement. If not paid within the maximum fee deferral period, interest penalties shall apply pursuant to EGMC Section 16.100.110 and payment of the fees secured by the deed of trust shall be undertaken pursuant to the provisions set forth in the executed agreement entered into for the subject property pursuant to EGMC Section 16.100.080.

G. For a single-family residential project, a partial release from the deed of trust securing the promissory note per individual unit shall be executed by the City upon receipt of written notification from the title company handling the escrow of said unit of the title company's receipt of the release from SHRA. For multifamily residential projects, a release from the deed of trust securing the promissory note shall be

executed by the City upon receipt of written notification from the title company handling the permanent loan financing of receipt of the release from SHRA.

H. For purposes of calculation of the fifteen (15) month maximum fee deferral period pursuant to this section, said period shall begin to run from the date of execution of the fee deferral agreement. If notification, in the form of a written demand letter, is not received from the title company by the last day of the fifteen (15) month period, all fees shall be due and payable pursuant to the provisions of the fee deferral agreement and shall be subject to the interest provisions of EGMC Section 16.100.110.

I. Notification by the title company of failure of a single or multifamily residential project to sell or rent the percentages of affordable rents or affordable housing costs for very low income households or low income households for which a fee deferral was approved pursuant to this chapter shall result in the imposition of interest penalties calculated from the date of execution of the fee deferral agreement pursuant to EGMC Section 16.100.110 and payment of the fees secured by the deed of trust pursuant to the provisions set forth in the executed agreement entered into for the subject property pursuant to EGMC Section 16.100.080.

J. The approval of a fee deferral pursuant to this chapter for a qualified residential project shall not be transferable to another project regardless of whether the applicant is the same for both projects or whether the other project is also a qualified residential project.

K. In the event that a qualified single-family residential project plans to sell or rent units both at market rate and for low income households, the applicant shall submit a copy of the tentative or final subdivision or parcel map for said qualified single-family residential project identifying all units for which a deferral is sought pursuant to this chapter. The tentative or final subdivision or parcel map shall be submitted with the fee deferral application. Prior to final map recordation, subsequent one-for-one (1:1) changes of the identification of market rate and low income household units on the tentative subdivision or parcel map shall require prior written approval of the Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of low income household units as set forth in the fee deferral application for said qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased. Final map recordation of the tentative subdivision map shall be required to be in substantial conformance with the entire tentative subdivision map per Section 66442 of the Government Code. Subsequent to final map recordation, one-for-one changes shall require prior written approval of the Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of Low Income household units as set forth in the fee deferral

application for the entire qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased.

**16.100.060 Fee waiver program.**

A. Only a qualified residential development project, as defined in EGMC Section 16.100.040(G), for which a letter of commitment has been issued by SHRA and which has been certified by SHRA to include at least ten (10%) percent of units with affordable rents or affordable housing costs for very low income households shall be eligible for waiver of any of those fees enumerated in EGMC Section 16.100.030. Said fees shall be waived in an amount proportional to the percentage of units affordable to very low income households. The certification of the specific very low income percentage for each individual project must be certified by SHRA and included in the fee waiver application prior to acceptance thereof.

B. The applicant shall pay all required fee waiver application and administrative processing fees pursuant to EGMC Section 16.100.130.

C. Security shall be required for fee waiver applications for the sole purpose of ensuring a method of recovery of those fees waived, in the event a residential development project fails to provide the percentages of affordable rents or affordable housing costs for very low income households for which a fee waiver was sought. Said security shall be in the form of a promissory note secured by a deed of trust encumbering each parcel of record owned by the applicant that is included in the qualified residential project. Said security shall be recorded for all development fees for which a waiver is requested pursuant to this chapter. The promissory note and deed of trust shall be in a form satisfactory to the Director and approved by the City Attorney. Said promissory note and deed of trust shall be recorded prior to the issuance of building permits and shall be secondary only to deeds of trust associated with acquisition or construction financing.

D. All fee waiver applications shall be subject to the cap provisions set forth in EGMC Section 16.100.090. No fee waiver applications will be accepted if the cap, as set forth in EGMC Section 16.100.090, has been reached for the fiscal year in which a fee waiver application is submitted. No waiting lists will be maintained by the Public Works Department.

E. All of the following requirements must be satisfied prior to approval of a fee waiver: (1) submittal to the Public Works Department of a complete application, including certification as a qualified residential project from SHRA and a preliminary title report; (2) deposit of all fees pursuant to EGMC Section 16.100.130; (3) recordation of security pursuant to subsection (C) of this section; and (4) execution and recordation of a waiver agreement pursuant to EGMC Section 16.100.080.

F. For a single-family residential project, a partial release from the deed of trust securing the promissory note per individual unit shall be executed by the City upon receipt of written notification from the title company handling the escrow of said unit of the title company's receipt of the release from SHRA. For multifamily residential projects, a release from the deed of trust securing the promissory note shall be executed by the City upon receipt of written notification from the title company handling the permanent loan financing of receipt of the release from SHRA.

G. Notification by the title company of failure of any single or multifamily residential project to provide the percentages of affordable rents or affordable housing costs for very low income households for which a fee waiver was sought pursuant to this chapter shall result in the imposition of interest penalties calculated from the date of execution of the fee waiver agreement pursuant to EGMC Section 16.100.110 and payment of the fees secured by the deed of trust pursuant to the provisions set forth in the executed agreement entered into for the subject property pursuant to EGMC Section 16.100.080.

H. The approval of a fee waiver pursuant to this chapter for a qualified residential project shall not be transferable to another project regardless of whether the applicant is the same for both projects or whether the other project is also a qualified residential project.

I. A fee waiver shall be valid for a maximum fifteen (15) months from the date of execution of the fee waiver agreement. If notification, in the form of a written demand letter, is not received from the title company by the last day of the fifteen (15) month period, all fees shall be due and payable pursuant to the provisions of the fee waiver agreement and shall be subject to the interest provisions of EGMC Section 16.100.110.

J. In the event that a qualified single-family residential project plans to sell or rent units both at market rate and for very low income households, the applicant shall submit a copy of the tentative or final subdivision or parcel map for said qualified single-family residential project identifying all units for which a waiver is sought pursuant to this chapter. The tentative or final subdivision or parcel map shall be submitted with the fee waiver application. Prior to final map recordation, subsequent one-for-one (1:1) changes of the identification of market rate and very low income household units on the tentative subdivision or parcel map shall require prior written approval of the Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of very low income household units as set forth in the fee waiver application for said qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased. Final map recordation of the tentative subdivision map shall be required to be in substantial conformance with the entire tentative subdivision map per Section 66442 of the Government Code. Subsequent to final map recordation, one-for-one (1:1) changes

shall require prior written approval of the Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of very low income household units as set forth in the fee waiver application for the entire qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased.

**16.100.070 Deferral and waiver program.**

A. A qualified residential development project, as defined in EGMC Section 16.100.040(G), which has been certified by SHRA to include at least ten (10%) percent of units with affordable rents or affordable housing costs for very low income households; or at least forty-nine (49%) percent of units with affordable rents or affordable housing costs for low income households, of which at least ten (10%) percent of said units are with affordable rents or affordable housing costs for very low income households, may file an application with the Public Works Department to request a combination of deferral and waiver of any of those fees enumerated in EGMC Section 16.100.030. The specific percentage of types of units to be offered in a residential development project must be certified by SHRA and included in the fee deferral and waiver application prior to acceptance thereof. Only residential development projects for which a letter of commitment is received by the Public Works Department directly from SHRA may apply for a fee waiver under this section in combination with a fee deferral. An application requesting both fee deferral and waiver shall be subject to all provisions set forth in this chapter. Pursuant to EGMC Section 16.100.080, a single agreement shall be entered into by an applicant requesting both deferral and waiver of fees for one project.

B. For a fee deferral and waiver for a qualified single-family residential project, the applicant shall submit a copy of the tentative or final subdivision or parcel map for said qualified single-family residential project identifying each unit for which a deferral is sought and each unit for which a waiver is sought. In the event that the qualified single-family residential project includes units offered at market rate, these units shall also be identified on said tentative or final subdivision or parcel map. The tentative or final subdivision or parcel map shall be submitted with the fee deferral and waiver application. Prior to final map recordation, subsequent one-for-one (1:1) changes of the identification of units on the tentative subdivision or parcel map shall require prior written approval of the Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of very low income household units and low income household units as set forth in the fee deferral and waiver application for said qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased. Final map recordation of the tentative subdivision map shall be required to be in substantial conformance with the entire tentative subdivision map per Section 66442 of

the Government Code. Subsequent to final map recordation, one-for-one (1:1) changes shall require prior written approval of the

Director and shall be permitted only if the same deed of trust encumbers both of the lots for which the change is requested and provided that the percentage of low income and very low income household units as set forth in the fee deferral and waiver application for the entire qualified single-family residential project and the accompanying certification from SHRA is not increased or decreased.

C. Notification by the title company of failure of any single- or multifamily residential project to provide the percentages of affordable rents or affordable housing costs for low income and very low income households for which a fee deferral and waiver was sought pursuant to this chapter shall result in the imposition of interest penalties calculated from the date of execution of the fee deferral and waiver agreement pursuant to EGMC Section 16.100.110 and payment of the fees secured by the deed of trust pursuant to the provisions set forth in the executed agreement entered into for the subject property pursuant to EGMC Section 16.100.080.

D. Upon execution of the fee deferral and waiver agreement, an applicant who fails to provide the percentage of affordable rents or affordable housing costs for very low income households in either a single- or multifamily project for which a fee waiver is sought in combination with a fee deferral request shall not be permitted to subsequently request a fee deferral for any portion of the units that no longer qualify for a waiver of fees.

E. The approval of a fee deferral and waiver for a qualified residential project shall not be transferable to another project regardless of whether the applicant is the same for both projects or whether the other project is also a qualified residential project.

F. Fee deferral and waiver approvals shall be valid for a maximum fifteen (15) months from the date of execution of the fee deferral and waiver agreement. If notification, in the form of a written demand letter, is not received from the title company by the last day of the fifteen (15) month period, all fees shall be due and payable pursuant to the provisions of the fee deferral and waiver agreement and shall be subject to the interest provisions of EGMC Section 16.100.110.

#### **16.100.080 Deferral, waiver and subordination agreements.**

Upon verification by the Director of receipt of a complete application, the applicant shall enter into a deferral or waiver agreement or a single agreement for both with the City in a form satisfactory to the Director and approved by the City Attorney. Such agreement shall, at a minimum, be site specific and provide for the enforcement of the provisions of this chapter and shall be recorded with the Sacramento County Clerk-Recorder. A



single agreement shall be entered into for each project whether or not the applicant is the same for multiple projects. In addition, the applicant shall execute a separate subordination agreement for each encumbrance or deed of trust other than one which secures repayment of acquisition or construction financing existing at the time of execution of the deferral or waiver or deferral and waiver agreement. Authority to execute these agreements on behalf of the City is hereby delegated to the Director, subject to approval of the City Attorney as to form.

**16.100.090 Fee waiver cap.**

A. The total number of fee waivers to be approved by the Public Works Department shall be capped annually at two hundred (200) dwelling units or five (5%) percent of the number of dwelling units for which residential building permits for new construction were issued in the City in the previous fiscal year, whichever is greater. Calculation of the annual number of dwelling units shall be based on the City's fiscal year.

B. For purposes of calculation of the cap, the date of the commitment letter from SHRA shall determine in which fiscal year the dwelling units for a particular qualified residential project will be included. For the sole purpose of calculation of the cap, SHRA may, with the prior approval of the Director, substitute a letter of commitment for a new qualified residential project for another qualified residential project which already has a letter of commitment on file with the Public Works Department only if this substitution occurs prior to the execution of the fee waiver agreement or fee deferral and waiver agreement for the qualified residential project already on file with the Public Works Department. No substitutions whatsoever shall occur after execution of the fee waiver agreement.

C. Failure to reach the cap in a particular fiscal year shall not result in a rollover of the surplus dwelling units to the next fiscal year.

D. A qualified residential project, for which a letter of commitment has been received from SHRA, which does not execute the waiver or deferral and waiver agreement within the fiscal year for which it has qualified under the cap, may, with prior written notification to the Director, roll over the commitment letter until the end of the subsequent fiscal year. The rollover shall not be counted to the subsequent fiscal year calculation of the cap. No additional extensions shall be permitted. Failure of a qualified residential project to execute the waiver or deferral and waiver agreement within the extension period of time provided for in this subsection shall result in the purging of the letter of commitment for said project from the Public Works Department files. Ensuing requests for a fee waiver for the same project shall require the re-submittal of new documentation, including a new letter of commitment. Resubmittal shall be given no priority over new applications for a fee waiver and shall be subject to the provisions of the cap set forth in this section in the same manner as new applications.

E. Failure of a particular applicant to satisfy the requirements set forth in this section for the fee waiver program shall not result in the replacement of those dwelling units into the pool of dwelling units available pursuant to the cap in a particular fiscal year.

**16.100.110 Interest.**

A. For qualified residential projects, which have been approved for a deferral of fees pursuant to this chapter, no interest shall accrue during the period of deferral. However, in the event that the applicant fails to provide the percentage of low or very low income units or rentals as stated in the fee deferral application, an interest penalty equal to the rate of interest earned by the City of Elk Grove on the investment of pooled funds on that amount of disqualified deferred fees, computed from the date of execution of the fee deferral or fee deferral and waiver agreement, shall be assessed and shall be due and payable pursuant the provisions of the agreement entered into for the subject project pursuant to EGMC Section 16.100.080.

B. In the event that an applicant fails to provide the percentage of very low income units approved in the fee waiver application, an interest penalty equal to the rate of interest earned by the City of Elk Grove on the investment of pooled funds on that amount of disqualified waived fees, computed from the date of execution of the fee waiver or fee deferral and waiver agreement, shall be assessed and shall be due and payable pursuant to the provisions of the agreement entered into for the subject project pursuant to EGMC Section 16.100.080.

**16.100.120 Fee increases.**

Fees which qualify for a fee deferral or waiver or a combination fee deferral and waiver shall not be subject to fee increases which may occur from the date of execution of the agreement required pursuant to EGMC Section 16.100.080 to the end of the fifteen (15) month maximum period permitted under this chapter. However, subsequent applications for the same qualified residential project shall be subject to the fee rate in effect at the time of submittal of the subsequent application.

**16.100.130 Fee deferral/waiver application and administrative processing fees.**

A nonrefundable fee deferral/waiver application fee of Six Hundred and no/100<sup>ths</sup> (\$600.00) Dollars is hereby established and shall be paid at the time of application for a fee deferral or fee waiver or fee deferral and waiver pursuant to this chapter. A nonrefundable administrative processing fee of Two Hundred Seventy-Five and no/100<sup>ths</sup> (\$275.00) Dollars is hereby established for payment at the time of each individual building permit issuance for the purpose of funding the costs of administering the fee deferral/waiver program established by this chapter. These fees may from time to time be amended by resolution of the City Council.

### **16.100.140 Recordation costs.**

All costs of recordation of documents required pursuant to this chapter shall be paid by the applicant.

## **CHAPTER 16.120**

### **DEFERRAL OF CERTAIN IMPACT FEES**

Sections:

16.120.010 Title.

16.120.020 Purpose.

16.120.030 Applicable Fee Programs.

16.120.040 Definitions.

16.120.050 Fee Deferral Program.

16.120.060 Program Application.

16.120.070 Security.

16.120.080 Interest.

16.120.090 Fee Adjustments.

16.120.100 Administrative Charge.

16.120.110 Recordation Costs.

16.120.120 Expiration.

#### **16.120.010 Title.**

This Chapter shall be known and cited as the "Deferral of Certain Impact Fees."

#### **16.120.020 Purpose.**

The City Council of the City of Elk Grove desires to encourage the construction of residential and nonresidential development projects within the City. The City Council finds that the early payment of certain impact fees for new development creates a

barrier to such development and desires, by the adoption of this Chapter, to ease such barrier by deferring the time for payment of certain fees.

**16.120.030 Applicable Fee Programs.**

A. Notwithstanding any other provision of this Code, upon application and approval pursuant to Section 16.120.050 of this Chapter, an approved development project shall pay and the following fees shall be collected pursuant to the provisions of this Chapter:

1. Capital Facilities Fee;
2. Affordable Housing Fee;
3. Very Low-Income Housing Trust Fund Fee; and
4. Citywide Roadway Fee.

**16.120.040 Definitions.**

A. "Applicant" means the owner or owners of record of the real property with an approved development project for which a fee deferral is sought pursuant to this Chapter.

B. "Approved Development Project" means a project that has received final discretionary action by the City and which is in compliance with all environmental requirements due prior to issuance of a building permit.

C. "Market-rate Residential Development" means a development project consisting of single-family or multifamily residential units sold or rented at prevailing market-rates and free of any affordability restrictions.

**16.120.050 Fee Deferral Program.**

A. An approved development project may file an application with the City to request deferral of any of those fees enumerated in EGMC Section 16.120.030 of this Chapter.

B. Deferral of fees pursuant to this Chapter shall be acknowledged by an agreement or other writing satisfactory to the City and approved by the City Attorney. Said agreement may be executed by the City Manager.

C. All of the following requirements must be satisfied prior to approval of a fee deferral: 1) submittal to the City of a complete application; 2) deposit of all fees pursuant to EGMC Sections 16.120.100 and 16.120.110; 3) provide security for the payment of those fees to be deferred pursuant to EGMC Section 16.120.070; and 4) execution of an agreement pursuant to subsection (B).

D. Fees that are approved for deferral for a market-rate single-family residential development project pursuant to this Chapter shall be due and payable for each individual lot within the project upon the earlier of: 1) a request for final inspection under a building permit; 2) the close of escrow, if the security provided pursuant to EGMC Section 16.120.070 is the senior lien on the property, or 3) the close of the Maximum Deferral Period in subsection (F) and/or (G).

E. Fees that are approved for deferral for a market-rate multifamily residential project or a nonresidential development project pursuant to this Chapter shall be due and payable for each building within the project upon request for final inspection under a building permit.

F. The Maximum Fee Deferral period for any market-rate residential development project is twenty-four (24) months from the date of issuance of permits subject to fee deferral. The maximum fee deferral period may be extended by twelve (12) months at the discretion of the City Manager. Any additional extensions shall be at the discretion of the City Council. If not paid within the initial twenty-four (24) months of the fee deferral period, interest shall accrue on any unpaid balance pursuant to EGMC Section 16.120.080 and payment of the fees deferred shall be undertaken pursuant to the provisions set forth in the executed memorandum agreement entered into for the subject property pursuant to subsection (B).

G. The Maximum Fee Deferral period for any nonresidential development projects is five (5) years from the effective date of any agreement for a fee deferral pursuant to subsection (B). Payment under this subsection shall be made quarterly, beginning no later than the end of the first quarter of the fourth year of the fee deferral period. If not fully paid within the initial thirty-six (36) months of the fee deferral period, interest shall accrue on any unpaid balance pursuant to Section 16.120.080 and payment of the fees deferred shall be undertaken pursuant to the provisions set forth in the executed memorandum agreement entered into for the subject property pursuant to subsection (B). Upon commencement of quarterly payments, any remaining unpaid balance shall be set equal to the rates in effect at such time and shall not be subject to any further fee increases.

H. The approval of a fee deferral pursuant to this Chapter for any development project shall not be transferable to another project regardless of whether the applicant is the same for both projects or whether the other project is also a qualified project.

#### **16.120.060 Program Application.**

The application for fee deferral may be submitted concurrently with or in advance of any application for building permits for the subject property, and shall be accompanied by

any security and application fees required by this Chapter. In no event, however, shall a building permit be issued until either of the following occurs:

- A. Payment of all applicable fees due; or
- B. Execution of a Fee Deferral agreement pursuant to EGMC Section 16.120.050(B).

**16.120.070 Security.**

Prior to execution of the agreement pursuant to EGMC Section 16.120.050(B), the applicant shall provide security for the payment of those fees to be deferred. Such security shall be subject to the approval of the City and shall consist of one or more of the following:

- A. Assigned passbook or certificate of deposit;
- B. Irrevocable letter of credit;
- C. Surety bond;
- D. Lien against the property;
- E. Negotiable securities if approved by the City Council; or
- F. Reservation of funds within the escrow account of the senior lender.

**16.120.080 Interest.**

A. For all projects which have been approved for a deferral of fees pursuant to this Chapter, no interest shall accrue during the period of deferral. However, in the event fees are not paid at the time required by this Chapter, a penalty equal to the annual rate of interest earned by the City of Elk Grove on the investment of pooled funds, computed on the unpaid amount from the date of execution of the deferral agreement to time of payment, shall be due and payable.

B. For nonresidential projects opting to defer eligible fees for more than thirty-six (36) months pursuant to EGMC Section 16.120.050 (g), interest shall be charged annually, beginning in the fourth year of the deferral period, on any unpaid balance equal to the rate of interest earned by the City of Elk Grove on the investment of pooled funds.

C. If the applicant is a targeted company, or agent for a targeted company, interest on amounts deferred shall be waived. A targeted company is a company which can demonstrate that it will either:

1. Retain or bring to the City of Elk Grove either fifty (50) or more full-time jobs each paying over Thirty Thousand and no/100<sup>ths</sup> (\$30,000.00) Dollars per year;

2. Retain or bring to the City of Elk Grove either twenty (20) or more full-time jobs each paying Fifty-Five Thousand and no/100<sup>ths</sup> (\$55,000.00) Dollars or more;

3. Be physically located within the Old Town Specific Plan Area.

The City Manager, or his or her designee, is hereby vested with the authority to determine whether an applicant is a targeted company or is an agent for a targeted company.

#### **16.120.090 Fee Adjustments.**

Deferred fees shall be paid at the rate or rates applicable at the time of payment.

#### **16.120.100 Administration Charge.**

The City Council may from time to time, by resolution, establish a fee for payment at time of application for the purpose of funding the costs of administering the fee deferral program established by this Chapter.

#### **16.120.110 Recordation Costs.**

All costs of recordation of documents required pursuant to this Chapter shall be paid by the applicant at the time of execution of any Fee Deferral agreement pursuant to EGMC Section 16.120.050(B).

#### **16.120.120 Expiration.**

This Chapter shall remain in effect until June 30, 2010, and as of that date is repealed.

### **Chapter 16.130**

#### **SWAINSON'S HAWK IMPACT MITIGATION FEES**

Sections:

16.130.010 Purpose and intent.

16.130.020 Definitions.

16.130.030 Applicability.

16.130.040 Conditions.

16.130.045 Impact mitigation fee.

16.130.080 Use of impact mitigation fee funds.

16.130.110 Authority of City Council to override mitigation measures.

**16.130.010 Purpose and intent.**

The City of Elk Grove City Council finds that the continued expansion of urban uses into the agricultural lands within the City that are identified through the California Environmental Quality Act ("CEQA") process to provide suitable foraging habitat for the Swainson's hawk, a listed threatened species under the California Endangered Species Act, will, absent mitigation, result in a significant reduction of such foraging habitat. The reduction in foraging habitat can occur through requests for zoning changes of agriculturally zoned lands to land use designations that enable land to be reduced to parcel sizes too small to support Swainson's hawk foraging habitat or through requests for land use entitlements for nonagricultural uses that are incompatible with the maintenance of Swainson's hawk foraging habitat. The California Department of Fish and Game ("DFG") has determined that parcels of land of five (5) acres or more in size are recognized to be the minimum acreage required for viable foraging habitat. Requests to subdivide AR-1 or AR-2 zoned property with an original total acreage size of five (5) acres or more to the lot sizes permitted under these zoning designations can also result in the reduction of foraging habitat for the Swainson's hawk. For any such requests which are within ten (10) miles of a Swainson's hawk nest, the City Council desires to establish an additional means of mitigating for loss of Swainson's hawk foraging habitat.

The City has identified, in consultation with the California Department of Fish and Game, that suitable foraging habitat for the Swainson's hawk exists in established land conservation programs in Sacramento County and also in agricultural and open lands currently not part of a conservation program. The City finds that the most effective means of mitigation for the loss of suitable Swainson's hawk foraging habitat is the direct preservation, in perpetuity, of equally suitable foraging habitat on an acre-per-acre ratio. Such preservation should occur, pursuant to this chapter, prior to the onset of development activities that cause the impact (i.e., land clearing and site grading). Development project proponents should be responsible for locating and acquiring the appropriate land or legal instruments (such as a conservation easement) that will ensure its preservation as Swainson's hawk foraging habitat in perpetuity. The City also finds that it may be infeasible to acquire easements for less than forty (40) acres and that proponents of projects less than forty (40) acres should have the option to mitigate adverse impacts to Swainson's hawk foraging habitat through the payment of an impact mitigation fee. An impact mitigation fee, as established pursuant to this chapter, will provide funds to acquire available land with suitable Swainson's hawk foraging habitat values. Such acquisition will create mitigation for the loss of this habitat through real



property acquisition in fee or through conservation easements to facilitate the expansion of land conservation programs which include the preservation and management of Swainson's hawk foraging habitat.

The City Council recognizes that mitigation for foraging habitat for the Swainson's hawk is only feasible when replacement habitat is provided within the known foraging area for the hawk. In order to provide adequate mitigation for the loss of Swainson's hawk foraging habitat under CEQA through the provisions of this chapter, the City Council deems it necessary to expand the scope of this mitigation fee program to parcels located within the geographical foraging area of the Swainson's hawk that are owned and/or managed by a conservation organization where the location of mitigation parcels and the conservation organization are acceptable to the Department of Fish and Game.

The City Council finds that the direct preservation of suitable Swainson's hawk foraging habitat or the payment of an impact mitigation fee by project proponents for the actual acquisition of such habitat will meet the requirements of mitigation under CEQA by reducing the level of impact to Swainson's hawk foraging habitat to a less than significant level for those parcels falling within the scope of this chapter as set forth herein. The City Council intends that the requirement of direct preservation of suitable Swainson's hawk foraging habitat for projects forty (40) acres and greater and the requirement of an impact mitigation fee for projects less than forty (40) acres, in the amount set forth in this chapter, shall be included as mitigation options. Said mitigation shall arise when the environmental review process for a request falling within the scope of this chapter concludes that there would be a significant impact or a significant cumulative impact on the Swainson's hawk foraging habitat for which mitigation, pursuant to all applicable provisions of Section 21000 et seq., of the Public Resources Code and Title 24, Section 15000 et seq., of the California Code of Regulations, is required. The City Council also recognizes its continued authority to determine based on specific economic, social, legal, technical or other considerations that mitigation for Swainson's hawk foraging habitat is infeasible or that evidence has been presented to the City Council, which the Council determines eliminates the need for such mitigation.

#### **16.130.020 Definitions.**

"Agricultural designation" shall mean land which is zoned any of the following zoning designations or combinations thereof: AG-80, AG-20, AR-10, AR-5, A-10, and A-2.

"CEQA" means the California Environmental Quality Act.

"DFG" means the California Department of Fish and Game.

"Project" shall mean the total combined gross acreage of a parcel or parcels included in a development proposal subject to CEQA review.

“Urban designation” shall mean land which is zoned any of the following zoning designations or combinations thereof: a “residential land use zone” as set forth in Sacramento County Zoning Code Section 201-01, a “commercial land use zone” as set forth in Sacramento County Zoning Code Section 225-10 or an “industrial land use zone” as set forth in Sacramento County Zoning Code Section 230-10; a specific plan designation or a special planning area designation encompassing any of the aforementioned zoning designations or combinations thereof.

**16.130.030 Applicability.**

A. This chapter shall apply to any project that has been determined through the CEQA process to result in a potential significant impact or potential significant cumulative impact on Swainson’s hawk foraging habitat for which mitigation measures have been identified as necessary to reduce that impact to a less than significant level, and for which any of the following requests are being sought:

1. Any request for a change in land use designation from an agricultural designation to an urban designation; or
2. Any request to subdivide five (5) acres or more of contiguous land zoned AR-1 or AR-2; or
3. Any request for a land use entitlement for a nonagricultural use of land zoned with an agricultural designation; or
4. Any request for a land use entitlement for a nonagricultural use of land five (5) acres or more in size zoned AR-1 or AR-2; or
5. Any public improvement project proposed by any department or agency of the City of Elk Grove on land with an agricultural designation.

B. This chapter shall apply to any project approved prior to the effective date of the ordinance codified in this chapter which was conditioned to require mitigation for impacts to Swainson’s hawk foraging habitat and which mitigation has not been completed through the payment of a fee or other mechanism included in such mitigation measure.

**16.130.040 Conditions.**

A. On and after the effective date of the ordinance codified in this chapter, for any project forty (40) acres and greater falling within the provisions of EGMC Section 16.130.030, the following mitigation measure shall be required to reduce the impact to the Swainson’s hawk foraging habitat of that particular project to a less than significant level:

The project applicant shall acquire conservation easements or other instruments to preserve suitable foraging habitat for the Swainson's hawk, as determined by the California Department of Fish and Game. The location of mitigation parcels as well as the conservation instruments protecting them shall be acceptable to the City and to the California Department of Fish and Game. The amount of land preserved shall be governed by a one-to-one (1:1) mitigation ratio for each acre developed at the project site. In deciding whether to approve the land proposed for preservation by the project applicant, the City shall consider the benefits of preserving lands in proximity to other protected lands. The preservation of land shall be done prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, whichever occurs first. In addition, the City shall impose the following minimum conservation easement content standards:

1. The land to be preserved shall be deemed suitable Swainson's hawk foraging habitat by the California Department of Fish and Game.
2. All owners of the mitigation land shall execute the document encumbering the land.
3. The document shall be recordable and contain an accurate legal description of the mitigation land.
4. The document shall prohibit any activity which substantially impairs or diminishes the land's capacity as suitable Swainson's hawk foraging habitat.
5. If the land's suitability as foraging habitat is related to existing agricultural uses on the land, the document shall protect any existing water rights necessary to maintain such agricultural uses on the land covered by the document, and retain such water rights for ongoing use on the mitigation land.
6. The applicant shall pay to the City a mitigation monitoring fee to cover the costs of administering, monitoring and enforcing the document in an amount determined by the receiving entity, not to exceed ten (10%) percent of the easement price paid by the applicant, or a different amount approved by the City Council, not to exceed fifteen (15%) percent of the easement price paid by the applicant.
7. Interests in mitigation land shall be held in trust by an entity acceptable to the City in perpetuity. The entity shall not sell, lease, or convey any interest in mitigation land which it shall acquire without the prior written approval of the City.
8. The City shall be named a beneficiary under any document conveying the interest in the mitigation land to an entity acceptable to the City.

9. If any qualifying entity owning an interest in mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall be transferred to another entity acceptable to the City.

Before committing to the preservation of any particular land pursuant to this measure, the project proponent shall obtain the City's approval of the land proposed for preservation. This mitigation measure may be fulfilled in combination with a mitigation measure imposed on the project requiring the preservation of agricultural land as long as the agricultural land is determined by the Department of Fish and Game to be suitable Swainson's hawk habitat.

B. On and after the effective date of the ordinance codified in this chapter, for any project less than forty (40) acres falling within the provisions of EGMC Section 16.130.030, the following mitigation measures shall be included within the mitigation measure options identified to reduce the impact to the Swainson's hawk foraging habitat of that particular project to a less than significant level:

1. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, whichever occurs first, the project applicant shall preserve one acre of similar habitat for each acre lost. This land shall be protected through a fee title or conservation easement acceptable to the DFG and the City of Elk Grove as set forth in subsection (A) of this section as such may be amended from time to time and to the extent that said subsection remains in effect; or

2. Prior to any site disturbance, such as clearing or grubbing, or the issuance of any permits for grading, building, or other site improvements, whichever occurs first, the project applicant shall submit payment of Swainson's hawk impact mitigation fee per acre of habitat impacted, payment shall be at a one-to-one (1:1) ratio, to the City of Elk Grove in the amount set forth in this chapter as such may be amended from time to time and to the extent that this chapter remains in effect.

C. The requirement of direct land preservation or payment of an impact mitigation fee established pursuant to this chapter is also applicable to those projects that were approved prior to the effective date of the ordinance codified in this chapter and which are conditioned to require mitigation for impacts to Swainson's hawk foraging habitat to include the option to participate in a future Swainson's hawk mitigation policy/program adopted by the City Council, provided the property owner/developer of any such project has not yet completed an alternative mitigation measure for impacts to Swainson's hawk foraging habitat and provided that the parcel(s) included in such a previously granted request fall within the scope of this chapter as set forth in EGMC Section 16.130.030.

**16.130.045 Impact mitigation fee.**

The impact mitigation fee shall be that amount established by resolution of the Elk Grove City Council as such may be amended from time to time.

**16.130.080 Use of impact mitigation fee funds.**

A. The City shall establish a separate interest-bearing fund within the City Treasury, in which monies collected pursuant to this chapter shall be deposited.

B. Monies from said fund shall be transferred pursuant to the terms and conditions acceptable to DFG and the City of Elk Grove. Monies from said fund shall be used for the specific acquisition of lands, in fee simple or through a conservation easement.

C. Pursuant to the terms and conditions of said agreement, said lands shall be held in perpetuity for Swainson's hawk foraging habitat.

**16.130.110 Authority of City Council to override mitigation measures.**

Nothing herein shall be construed to preclude the City Council's consideration or approval of other means of mitigating significant impact or significant cumulative impact on Swainson's hawk foraging habitat or to limit the City Council's authority to override mitigation measures for reasons permitted by CEQA.

**TITLE 17**

**FIRE PREVENTION**

**Chapters:**

**17.04 Uniform Fire Code**

**17.12 Weed Control**

**CHAPTER 17.04**

**UNIFORM FIRE CODE**

**Sections:**

17.04.010 Adoption of Uniform Fire Code.

17.04.020 Enforcement.

- 17.04.030 Findings.
- 17.04.040 Definitions.
- 17.04.050 Modifications.
- 17.04.060 Appeals.
- 17.04.070 New Materials, Processes or Occupancies which may require Permits.
- 17.04.080 Penalties.
- 17.04.090 Amendments to the International Fire Code.
- 17.04.100 High Explosives.
- 17.04.110 Public Safety 800 Mhz Radio Building Amplification System.
- 17.04.120 Flammable and Combustible Liquids and Liquefied Petroleum Gases.
- 17.04.130 Structural Fires.
- 17.04.140 Repeal of Conflicting Ordinances.

**17.04.010 Adoption of Uniform Fire Code.**

There is hereby adopted by the City Council of the City of Elk Grove for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the California Fire Code, Title 24, California Code of Regulations, Part 9, incorporating the International Fire Code published by the ICC, being particularly the 2007 Edition, including the appendices thereof, and the International Fire Code Standards published by the ICC, being particularly the 2006 Edition, and the wholes thereof, save and except such portions as hereinafter deleted, modified or amended herein. Not less than one (1) copy of such code has been and now is filed with the Building Official of the City of Elk Grove.

**17.04.020 Enforcement.**

The Chief of the Cosumnes Community Services District Fire Department or his or her designee shall have authority to enforce this chapter and issue citations for violations of this Code.

#### **17.04.030 Findings.**

The Findings of Fact are filed separately with the California State Fire Marshal's Office, State Department of Housing and Community Development and the City of Elk Grove.

#### **17.04.040 Definitions.**

- A. Whenever the word "International Fire Code" is used in this ordinance, it shall mean the California Fire Code, Title 24, California Code of Regulations, Part 9, incorporating the 2006 Edition of the International Fire Code.
- B. Wherever the word "municipality" is used in the International Fire Code, it shall mean the City of Elk Grove.
- C. Wherever the words "Chief" or "Chief of the Bureau of Fire Prevention" are used in the International Fire Code, they shall mean the Chief of the Cosumnes Community Services District Fire Department or his or her designee.

#### **17.04.050 Modifications.**

The Chief or his or her designated representative may modify any of the provisions of the International Fire Code upon application in writing by the owner or lessee, or his or her duly authorized agent, when the Chief or his or her designated representatives determines there are practical difficulties in the way of carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the Chief or his or her designated representative thereof shall be entered upon the records of the department and a signed copy shall be furnished to the applicant.

For the purposes of this section, the cost of compliance with the provisions of this Code shall not constitute a practical difficulty.

#### **17.04.060 Appeals.**

Any person aggrieved by any decision or action of the Chief may appeal to the Board of Directors of the Cosumnes Community Services District by filing a written notice of appeal with the Clerk of the Board of Directors within thirty (30) days from the date such decision or action was taken.

#### **17.04.070 New Materials, Processes or Occupancies which may require Permits**

The Chief may appoint two (2) members from his or her staff to act as a committee to determine and specify, after giving affected persons an opportunity to be heard at an office hearing, any new material, processes or occupancies, which shall require permits,

in addition to those now enumerated in the code. The Chief or his or her designated representative shall post such list in a conspicuous place in his or her office, and distribute copies thereof to interested persons.

#### **17.04.80 Penalties.**

A. Any person who violates any of the provisions of this chapter and the code hereby adopted or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans thereunder, or who fails to comply with such an order as affirmed or modified by the Board of Directors of a fire protection district or by a court of competent jurisdiction, within the time fixed herein, shall be guilty of an infraction. Any person who violates Appendix Chapter 1, Section 109.2.3.1 Citations, and Section 109.2.2 Compliance with Orders or Notices, and Section 109.2.4 Unauthorized Tampering shall be guilty of a misdemeanor. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all persons shall be required to correct or remedy such violation or defects within a reasonable time to be determined by the Chief on a case-by-case basis. When not otherwise specified each day or portion thereof during which any violation occurs or continues shall constitute a separate offense.

B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

#### **17.04.90 Amendments to the International Fire Code.**

A. Appendix Chapter 1, Section 101.1 of the 2007 California Fire Code is hereby amended to read as follows:

These regulations shall be known as the Fire Code of the City of Elk Grove, hereinafter referred to as "this code".

B. Appendix Chapter 1, Section 104.7.2 of the 2007 California Fire Code is hereby amended to add the following:

**104.7.2.1 Contract Inspector.** The Chief or his or her designated representatives may require the owner or the person in possession or control of the building or premises to provide, without charge to the fire department or the City, a special inspector ("Contract Inspector"), when the department has no technical expertise available to conduct the required inspections.

The Contract Inspector shall be a qualified person who shall demonstrate his or her competence to the satisfaction of the Chief, for inspection of a particular type of construction, operations, fire extinguishing or detection system, or process.



Duties and responsibilities of the Contract Inspector shall include but not be limited to the following:

- i. The Contract Inspector shall observe the work assigned for conformance with the approved design drawings and specifications.
- ii. The Contract Inspector shall furnish inspection reports to the Chief, building official, and other designated persons as required by the Chief. All discrepancies shall be brought to the immediate attention of the contractor for correction, then if uncorrected, to the proper design authority, Chief, and to the building official.
- iii. The Contract Inspector shall submit a final signed report stating whether the work requiring inspection was, to the best of his or her knowledge, in conformance with the approved plans and specifications and the applicable workmanship provision of this code.
  - a. Appendix Chapter 1, Section 105.2.2 of the 2007 California Fire Code is hereby amended to read as follows:

**105.2.2 Inspection Required.** Before a permit is issued, the Chief may inspect and approve the receptacles, vehicles, buildings, devices, premises, storage space or areas to be used to determine compliance with this code or any operational constraints required. For all instances where laws or regulations are enforced by departments other than the Cosumnes Community Services District Fire Department, joint approval shall be obtained from all departments concerned.

- d. Appendix Chapter 1, Section 105.4.1 of the 2007 California Fire Code is hereby amended to add the following:

**105.4.1.1 Plans.** A minimum of two (2) copies of the complete plans, specifications, and information for new construction, remodeling, fill-in projects, or additions to buildings shall be submitted for review prior to construction to the Chief or his or her designated representatives having jurisdiction. Plan approval shall be required prior to issuance of a Fire Department Inspection Record Card for those instances where such card may be required.

- e. Appendix Chapter 1, Section 106.2 of the 2007 California Fire Code is hereby amended to add the following:

**106.2.1 Administrative Costs.** When a test or inspection is scheduled and the contractor fails to perform to the satisfaction of the authority having jurisdiction, the authority having jurisdiction may bill the contractor for actual time spent traveling to and from the test/inspection location and the time spent at the test/inspection site as well as administrative costs.

**106.2.2 Inspection Record Card.** Work requiring Fire Department approval may commence, but the person doing the work shall have posted or otherwise made available an inspection record card such as to allow the Chief to conveniently make the required entries thereon regarding inspection of the work. Work shall not be covered until the required inspections are completed. This card shall remain posted or remain otherwise available by the permit holder until the Chief has granted final approval.

- f. Appendix Chapter 1, Section 109.2.3 of the 2007 California Fire Code is hereby amended to add the following:

**109.2.3.1**

- i. **Intent.** It is the intent of this division to specify enforcement procedures for the violation of this chapter.
- ii. **Enforcement Procedures.** The Chief shall follow the procedures outlined below in the investigation and enforcement of violations of the title:
  1. Notice to Comply. When it is determined by the Chief that a violation of this title exists, all known responsible persons shall be notified by registered or certified mail of the nature of the violation. The notice shall state that such responsible persons have seven (7) business days in which to correct the violation. The Chief may extend the seven (7) business day period if he or she determines that reasonable progress is being made to correct the violation.
  2. Notice to Appear Citation. The Chief or his or her authorized agent shall issue a notice to appear citation to the responsible party in the following instances:
    - A. When the seven (7) business day period noted in subsection (B) (1) of this section has lapsed and the violation has not been corrected.
    - B. When the extension period noted in subsection (B) (1) of this section has lapsed and the violation has not been corrected.
    - C. Immediately upon observing the responsible party committing a violation of this chapter. If, after the notice to appear citation is issued, the responsible party has complied with all applicable provisions of this chapter, the citation may be dismissed by the Chief. The responsible party shall provide the proof of correction by the Chief to the court clerk.

- iii. **Infraction.** The responsible person(s) shall be guilty of an infraction if the violation still exists after the seven (7) business day period, or any extensions thereto, has lapsed, or immediately upon being observed in violation of any provision of this chapter. Each day, or portion thereof, the violation still exists shall be a new and separate offense. The first three (3) violations of the same section of the chapter, on the same property, shall be considered infractions and shall be punished as follows:
  - 1. For the first violation, a fine of One Hundred and no/100<sup>ths</sup> (\$100.00) Dollars, plus any additional penalties assessed by the court.
  - 2. For the second violation within one year, a fine of Five Hundred and no/100<sup>ths</sup> (\$500.00) Dollars, plus any additional penalties assessed by the court.
  - 3. For the third violation within one (1) year, a fine of One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars, plus any additional penalties assessed by the court.
- iv. **Misdemeanor.** If the number of violations of the same section of this chapter on the same property exceeds three (3) in any calendar year, the responsible person(s) shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable as follows:
  - 1. By a fine of not more than One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars; or
  - 2. By imprisonment in jail for a term of not more than six (6) months; or
  - 3. By such fine and/or imprisonment as noted in subsections (B) (4) (a) and (b) of this section.
- v. **Disposition of Fines and Fees.** All fines and fees collected under the provisions of this chapter shall be paid into the Cosumnes Community Services District treasury, to the credit of the fire department.
- vi. **Notice of Code Violation.**
  - 1. **Recording Notice.** Whenever the Chief or his or her authorized agent determines that a violation of the regulations specified in this chapter exists, the Chief or his or her authorized agent may record a notice of violation with the Sacramento County Clerk-Recorder. The owner(s) of record of the property on which the violation is situated and any other person responsible for the violation shall be notified of the recordation.

Notice to the owner(s) shall be sent to the address shown on the most recent tax roll. An office hearing with the Chief may be requested within twenty (20) days of receiving the intent to record a notice of code violation.

2. Releasing Notice. The Chief or his or her authorized agent shall submit a release of notice of code violation to the Sacramento County Clerk-Recorder when it is determined that noncomplying conditions have been corrected or removed. A fee, as set forth in the Elk Grove Fire Code fee schedule, may be charged the property owner for submittal of a release of notice of code violation.

- g. SECTION 202 [E] OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**ELECTRONIC MONITORING SYSTEM** shall mean an approved method to electronically detect and transmit to an approved alarm service provider's Type A (listed) Central Station, information indicating that the automatic fire sprinkler system or electronic fire detection system has been activated and shall have the ability to relay the alarm to the (a) Sacramento Regional Fire/EMS Communications Center.

- h. SECTION 202 [Q] OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**QUALIFIED ATTENDANT** shall mean an individual that has been trained in the proper methods of the handling, storage and dispensing of any material, product or substance regulated by the code. These shall include, but not be limited to ammonia, chlorine, cryogenic fluids, flammable and combustible liquids and gases.

Said attendant must be able to demonstrate to the satisfaction of the Chief that he or she possesses adequate knowledge in the subject area.

- i. SECTION 315.3 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**315.3.3 Outside Storage of pallets and other combustibles.** The maximum single pile dimension for outside storage of pallets and other combustibles shall be twenty-five by one hundred (25' 0" x 100' 0") feet or two thousand five hundred (2,500 ft<sup>2</sup>) square feet. The maximum pile height shall be twenty (20' 0") feet. Distance of piles to structures shall not be less than ten (10' 0") feet.

- j. SECTION 503.1.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**503.1.1 Buildings and facilities.** Fire apparatus access roads shall be provided in accordance with Sections 501 and 503 for every facility, building or portion of a building, including residential subdivisions in excess of forty (40) dwelling units, hereafter constructed or moved into or within the jurisdiction, when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than one hundred fifty (150' 0") feet (45 M) from fire apparatus access as measured by an approved route around the exterior of the building or facility. See also Section 504 for personnel access to buildings.

**EXCEPTIONS:** The Chief is authorized to increase the dimension of one hundred fifty (150' 0") feet (45 M) where:

- i. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of Sections 503.1.1 and 503.2 may be modified by the Chief.
- ii. When access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades or other similar conditions, the Chief is authorized to require additional fire protection.
- iii. When there is not more than two Group R, Division 3, or Group U Occupancies, the requirements of Sections 503.1.1 and 503.2 may be modified by the Chief.

More than one (1) fire apparatus road shall be provided in residential subdivisions in excess of forty (40) dwelling units and/or when it is determined by the Chief that access by a single road might be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

For high-piled combustible storage, see Section 2306.6.

For required access during construction, alteration or demolition of a building, see Section 1410.1.

- k. SECTION 505.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**505.1 General.** Approved numbers or addresses shall be placed prior to occupying on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background. In setting requirements for addressing, the Chief may be guided by the standard published by the City of Elk Grove Building Inspection Division, "Posting of Building Addresses".

**505.1.1 Multiple tenant buildings.** Multiple tenant spaces serviced by vehicular access to the rear through any driveway, alleyway, or parking lot shall have numbers or addresses placed prior to occupancy on all new and existing buildings as to be plainly visible and legible from the rear access way when deemed necessary by the Chief. Multiple tenant spaces serviced by rear access through a corridor, exit court, or exit yard shall have approved numbers or addresses displayed on the rear of the tenant space, when deemed necessary by the Chief.

Multiple tenant spaces that front on interior walkways or pedestrian malls shall have approved numbers or addresses placed over the entrance door in all new and existing buildings. An illuminated annunciator or directory board shall be required at every entrance where deemed necessary by the Chief.

**505.1.2 Illumination.** Addressing shall be illuminated at night in all new buildings. Signs shall be internally or externally illuminated. When the luminance or the face of a sign is from an external source, it shall have an intensity of not less than five (5.0 fc) foot-candles. Internally illuminated signs shall provide equivalent luminance.

- I. SECTION 508.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**508.1 Required Water Supply.** An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. When any portion of the facility or building protected is in excess of one hundred fifty (150' 0") feet (45 M) from a water supply on a public street, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the Chief. See Section 508.5.

**EXCEPTIONS:**

- i. Group R, Division 3 Occupancies provided with an automatic fire sprinkler system approved by the adopted NFPA Standard in areas not provided with a public water supply.
- ii. Group U, Occupancies.
- iii. Water Supplies for Suburban and Rural Fire Fighting. Where the standards of this code cannot be met for development in rural areas, a fire sprinkler system or pressurized water system acceptable to the AHJ shall be acceptable to meet the water supplies required. Such proposals shall also be subject to the following:

1. The structure is beyond three thousand (3,000' 0") feet (914 M) of any existing adequate sized water system. Structures within three thousand (3,000' 0") feet (914 M) of an existing adequate sized water system, but beyond a water purveyor service area, will be reviewed on an individual basis.
2. When public or private water becomes available, connection to such a system shall be required.

m. SECTION 901.4.3 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**901.4.3.1 Fire Appliances.** The Chief shall designate the type and number of fire appliances to be installed and maintained in and upon all buildings and premises within his or her jurisdiction. This shall be done according to the relative severity of probable fire, including the rapidity with which it may spread. Such appliances shall be of a type suitable for the probable class of fire associated with such buildings or premises and shall have the prior approval of the Chief. Extinguishers shall be installed on the hangers or in the brackets supplied, or mounted in approved fire extinguisher cabinets unless the extinguishers are of the wheeled type.

n. SECTION 901.7.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**901.7.1.1 System maintenance.** All individuals or companies installing, repairing, testing, servicing or maintaining sprinkler systems, fire hydrant systems, standpipes, fire alarm systems, portable fire extinguishers, smoke and heat ventilators, smoke-removal systems and other fire protection or extinguishing systems or appliances shall be a fire protection contractor or contractor licensed for said work by the State of California or have the appropriate license required by the California State Fire Marshal's Office or both.

The authority having jurisdiction shall be notified immediately when a fire protection or detection system or portion thereof is found inoperable.

The authority having jurisdiction shall be notified in writing within seventy-two (72) hours by the person performing repairs, testing, or maintenance when a fire protection or detection system is not in compliance with applicable codes.

When changes involve shutting off water for a considerable number of sprinklers for more than four (4) hours, temporary water supply connections shall be made to sprinkler systems so that reasonable protection can be maintained. Protection shall be

restored each night in so far as possible. The Chief may require a fire watch while any system is inoperative.

When shorts, failures or other interruptions of service occur within a building's fire alarm system that connects to an approved alarm service provider's Type A (listed) Central Station or is a local alarm only, the Chief may require the system to be disconnected or shunt out the private fire alarm system and/or circuit. When shorts, failures, or other interruption of service occur within a building's fire alarm system that connects to an approved alarm service provider's Type A (listed) Central Station, the Chief may require the system to be repaired and written notification to be provided to the Chief before he or she responds to alarms generated by the system.

Where alarm system(s) are wholly or partially out of service for more than eight (8) hours, the alarm company having responsibility shall notify the fire dispatch center.

- o. SECTION 907.1.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**907.1.1 Construction Documents.** Complete plans and specifications of fire alarm systems shall be submitted for review and approval prior to system installation. Plans and specifications shall include, but not be limited to, a floor plan, cross section detail, riser diagrams, location of all alarm-initiating and alarm-signaling devices, alarm control - and trouble-signaling equipment, annunciators, power connection, battery calculations, conductor type and sizes, voltage drop calculations; and manufacture model numbers including cut sheets and listing information from a nationally recognized testing laboratory and the California State Fire Marshal's listing number(s).

All manual or automatic fire detection system plans and calculations or both shall bear the stamp of approval of a qualified registered professional engineer or fire alarm contractor (C-10), licensed for said work by the State of California. One copy may be retained by the Chief. Plans and specifications shall be provided at no cost to the Fire Department.

- p. SECTION 903.2 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**903.2 Where Required.** For all occupancies except, Group R, Division 3 and Group U Occupancies an automatic sprinkler system shall be installed and equipped with an electronic monitoring system as follows:

- i. In every story or basement of all buildings when the floor area exceeds one thousand five hundred (1,500 ft<sup>2</sup>) square feet (139.4 M<sup>2</sup>) and there is not provided at least twenty (20 ft<sup>2</sup>) square feet (1.86 M<sup>2</sup>) of opening



entirely above the adjoining ground level in each fifty (50' 0") lineal feet (15 M) or fraction thereof of exterior wall in the story or basement on at least one side of the building. Openings shall have a minimum dimension of not less than thirty (30") inches (762 MM). Such openings shall be accessible to the fire department from the exterior and shall not be obstructed in a manner that firefighting or rescue cannot be accomplished from the exterior.

When openings in a story are provided on only one side and the opposite wall of such story is more than seventy-five (75' 0") feet (22.86 M) from such openings, the story shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two (2) sides of an exterior wall of the story.

If any portion of a basement is located more than seventy-five (75' 0") feet (22.86 M) from openings required in Section 903.1.1, the basement shall be provided with an approved automatic sprinkler system.

- ii. At the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Sprinkler heads shall be accessible for servicing.
- iii. In rooms where nitrate film is stored or handled. See also Section 306.2.
- iv. In protected combustible fiber storage vaults as defined in Chapter 2. See also Chapter 29.
- v. In every new building where the total floor area exceeds three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet (334.48 M<sup>2</sup>) or greater. See item #9 below. Nothing in this subsection shall preclude the use of fire resistive substitutions otherwise permitted under IBC.
- vi. An automatic fire sprinkler system shall be installed in any portion of a building where there is a change of occupancy and the floor area of that portion of the building, which is changed, exceeds three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet (334.48 M<sup>2</sup>).
- vii. An automatic fire sprinkler system shall be installed in every building when there is an addition to the floor area in existence on the effective date of this ordinance of twenty (20%) percent or more within a twelve (12) month period and the aggregate floor area of the building exceeds three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet (334.48 M<sup>2</sup>).

- viii. In existing buildings, other than one or two family dwelling units. An fire sprinkler system shall be installed in any portion of an existing building, other than one or two-family dwelling units, where alterations or repairs within any twelve (12) month period exceed fifty percent (50%) of the assessed value of the existing building or structure.
- ix. For the provisions of this section, two (2) or more buildings existing entirely within the property lines of one parcel shall be considered a single building when exterior wall protection is not provided and the aggregate floor area exceeds three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet (334.48 M<sup>2</sup>).
- x. An automatic fire sprinkler system shall be installed in every new building of S-3 occupancy where the total floor area exceeds two thousand nine hundred ninety-nine (2,999 ft<sup>2</sup>) square feet. (278.72 M<sup>2</sup>) or greater.
- xi. For the provisions of this section, area separation walls shall not apply to eliminate the installation of a sprinkler system.

**EXCEPTION:**

Non-combustible, detached canopies open on four (4) sides not exceeding the basic allowable square footage in 2006 IBC Table 503 used exclusively for the parking or storage of private or pleasure vehicles and non-combustible storage (includes fuel islands).

q. SECTION 903.2.7 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**903.2.7.1 Group R, Division 3 Occupancies.** An approved automatic fire sprinkler system shall be installed within all new R-3 occupancies when the total floor area (area under roof including garages and attaches solid roof canopies) exceeds five thousand nine hundred ninety-nine (5,999 ft<sup>2</sup>) square feet and/or the total livable area (area not including garages and attached solid roof canopies) exceeds four thousand nine hundred ninety-nine (4,999 ft<sup>2</sup>) square feet. As of February 1, 2003, all contractors for single-family homes and duplexes (R-3 Occupancies) shall provide an option for residential fire sprinklers. Prior to the prospective buyer signing a sales contract, the contractor or their agent shall obtain from the Fire Department an informational packet containing educational materials approved by the Fire Department, including a form explaining the option for residential sprinklers. The contractor or their agent shall provide the approved informational packet to any and all prospective buyers and require the execution of a signed receipt for the educational material from the prospective buyer. The contractor shall install residential fire sprinklers upon the request and

execution of a purchase agreement by the homebuyer. Fire sprinkler systems for single-family homes and duplexes shall be designed and installed to not less than the minimum requirements contained in NFPA 13D, 1996. The increased protection provided by fire sprinkler systems installed under the provisions of this subsection will be considered when determining the minimum acceptable requirements for, but not limited to the following:

- i. One (1) hour fire resistive substitution.
- ii. Increase of one additional story from maximum heights established by Table 5B.
- iii. Exception to Required Fire Apparatus Access Roads as outlined in Article 9.
- iv. Exception to the Required Fire Flows as outlined in Appendix III-A of this code.

**903.2.7.2 Group U Occupancies.** Group U occupancies located within six (6' 0") feet (1.82 MM) of sprinklered Group R Occupancy shall have fire sprinklers installed.

- r. SECTION 903.3 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**903.3.8 General.** Fire-extinguishing systems shall be installed in accordance with the Building Code and Sections 903 and 904 of this Code.

Fire hose threads used in connection with fire-extinguishing systems shall be National Standard hose thread or as approved.

The location of fire department hose connections shall be approved.

In buildings used for high-piled combustible storage, fire protection shall be in accordance with Chapter 23.

When required by the Chief, approved signs shall identify the building(s) or portions of buildings served by a fire department connection.

When required by the Chief fire pumps shall be automatic.

- s. SECTION 903.4 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**903.4.4 Existing sprinkler systems.** All existing automatic sprinkler systems shall be monitored for water flow by an approved alarm service provider's Type A (listed) Central Station.

**903.4.5 Valves.** When required by the Chief, valves controlling sprinkler systems shall be maintained in an open position by locking the valve open in an approved manner.

- t. SECTION 903.6 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**903.6.2 Fire control room.** An approved fire control room shall be provided for all buildings protected by an automatic fire extinguishing system. Said room shall contain all system control valves, fire alarm control panels and other fire equipment required by the Chief. Fire control rooms shall be located within the building at a location approved by the Chief, and shall be provided with a means to access the room directly from the exterior. Durable signage shall be provided on the exterior side of the access door to identify the fire control room.

**EXCEPTION:** Group R, Division 3 Occupancies.

- u. SECTION 903.2.13 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**903.2.13.1 Automatic sprinkler system.** A fire sprinkler system shall be provided for all covered floats, marinas, piers, and any/all other covered floating structures that are commercially operated and exceeds three thousand five hundred ninety-nine (3,599 ft<sup>2</sup>) square feet (334.48 m<sup>2</sup>).

- v. SECTION 907.2.3 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**907.2.3. Group E.** Group E Occupancies shall be provided with fire alarm systems in accordance with Section 907.2.3. Group E, having an occupant load of fifty (50) or more shall be provided with an approved automatic fire alarm system. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. When more than one fire alarm control unit is used, they shall be interconnected and shall operate all indicating devices. Group E Occupancies with an occupant load of fifty (50) persons or less shall have an early-warning device as approved by the fire authority having jurisdiction. Every public, private or parochial school building having an occupant load of fifty (50) or more students or more than one classroom shall have a fire alarm system using the California Uniform Fire Code Signal outlined in the California Education Code, Section 32000 to 32004.

- w. SECTION 907.1.2 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**907.1.2.1 Branch electrical circuits.** When providing a fire alarm circuit in a multiple occupancy type building (multiple metering), the circuit shall be energized from the house meter panel board.

When a separate source of power (i.e. emergency generator) is provided the fire alarm circuit shall be energized from the emergency panel board.

- x. SECTION 907.15 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**907.15 Monitoring.** Required alarm systems shall be monitored by an approved alarm service provider's Type A (listed) Central Station as established by Sacramento Regional Fire/EMS Communication Center.

The Central Station monitoring company or approved Alarm Company shall notify the authority having jurisdiction in writing, within seventy-two (72) hours, of systems that are found not to be in compliance with applicable codes.

Receipt of supervisory signals by the monitoring company require the dispatch of a runner or maintenance person, arrival time not to exceed one (1) hour, unless the condition can be restored to normal through the subscriber's efforts.

**907.15.1 Multi-building or zone monitoring.** When a Central Station is monitoring more than one (1) zone or building with a single retransmitter, the Central Station shall identify the particular zone or building or both that is in alarm, where required by the Chief.

Fire Alarm Panels installed at the protected premise shall be capable of differentiating between signals, including water flow, manual, and automatic activating components and transmitting distinctive fire alarm, supervisory and trouble signals.

**907.15.2 Alarm transmission.** The activation of a fire sprinkler system, hood extinguishing system, special extinguishing system or a fire alarm/detection system shall cause the system to initiate a signal to the Central Station within ninety (90) seconds. Retransmission from the Central Station to the Fire Dispatch Center shall not exceed sixty (60) seconds.

**EXCEPTION:** Existing building without an alarm system which install hood extinguishing systems or special extinguishing systems need not be monitored.

- y. SECTION 907.16 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**907.16.1.** Two (2) separate telephone lines (numbers) shall be provided from the protected premises to the Central Station, which use Digital Alarm Communicator

Transmitter (DACT). All costs regarding the installation, maintenance, and continuous operation of those lines shall be the responsibility of the building owner.

- z. SECTION 2211.7.2 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**2211.7.2.4 Gas Detection Systems.** Repair garages used for repair of vehicles fueled by nonodorized gases, such as hydrogen and nonodorized LNG and LPG, shall be provided with an approved flammable gas detection system.

- aa. SECTION 2703.10.3 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following

**2703.10.3.7 Parking and Garaging.** Vehicles containing hazardous materials in amounts that require placarding under state or federal law and possessing the physical hazards listed in Section 2701.2.2 shall not be left unattended on any residential street; nor in or within five hundred (500' 0") feet of any residential area, apartment or hotel complex, educational, hospital or care facility at any time; or at any place that would, in the opinion of the Chief, present a life or safety hazard.

- bb. SECTION 3301.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**3301.1 Scope.** For explosives requirements, see Title 19 California Code of Regulations, Chapter 10. For Fireworks requirements, see Title 19 California Code of Regulations, Chapter 6 and City of Elk Grove Municipal Code Chapter 4.54.

- cc. SECTION 3308 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**3308.1 General.** The display of fireworks, including proximate audience displays and pyrotechnic special effects in theatrical, and group entertainment productions, shall comply with this chapter and Title 19 California Code of Regulations Chapter 6 – Fireworks.

**3308.1.1 Scope.** Fireworks and temporary storage, use, and handling of pyrotechnic special effects materials used in motion pictures, television, and theatrical and group entertainment productions shall be in accordance with Title 19 CCR, Chapter 6 – Fireworks.

**3308.2 Permit Application.** Permits are required to conduct a fireworks display as required by local and state regulations. Permit application shall be made not less than fourteen (14) days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the

point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind which the audiences will be restrained; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the Chief shall be consulted regarding requirements for standby personnel and fire apparatus. The fee for any such permit application shall be set by the Cosumnes Community Services District.

dd. SECTION 3308.2 OF THE 2007 CALIFORNIA FIRE CODE is hereby added:

**3308.2. General.** Fireworks displays shall be in accordance with local and state regulations.

**3308.2.1 Sales.** Permits are required for the sale and display of "Safe and Sane" approved fireworks as permitted and regulated by the City of Elk Grove Municipal Code under Chapter 4.54 as presently constituted, and as hereinafter amended.

**3308.2.2 Storage.** Storage of fireworks is prohibited except by special permits as required by local and state regulations.

**3308.2.3 Pyrotechnic special effects material.** A permit is required to manufacture, compound, store or use pyrotechnic special effects material as required by local and state regulations. A permit for use shall be granted only to a licensed pyrotechnic operator.

ee. SECTION 3404.2.9.1.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**3404.2.9.1.1 Required Foam Fire Protection Systems.** Foam fire protection shall be provided for above ground tanks, other than pressure tanks operating at or above one 1 psig (6.89 kPa), when such tank, or group of tanks spaced less than fifty (50' 0") feet (15 M) apart measured shell to shell, has a liquid surface area in excess of one thousand five hundred (1,500 ft<sup>2</sup>) square feet (139.4 m<sup>2</sup>), and is:

- i. Used for the storage of Class I or II Liquids,
- ii. Used for storage of crude oil,
- iii. Used for in-process products and is located within one hundred (100' 0") feet (30.48 M) of a fired still, heater, related fractioning or processing apparatus or similar device at a processing plant or petroleum refinery as herein defined, or
- iv. Considered by the Chief as presenting an unusual exposure hazard because of topographical conditions; nature of occupancy, proximity on the same or adjoining property, and height and character of liquids to be stored; and

degree of private fire protection to be provided and facilities of the fire department to cope with flammable liquid fires.

ff. SECTION 3404.2.14.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

i. Unless permitted by the Chief, tank(s) shall not be disassembled by any removal method at the site.

gg. SECTION 3806 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**3806.4 Tank Vehicle, Tank Car, and Pipelines.** A qualified attendant shall be present at all times while a tank vehicle or tank car is discharging cargo. Whenever practicable, the tank vehicle or tank car shall be positioned so that the operating controls and the discharging end of the hose or hoses are both in view of the attendant.

hh. SECTION 4501 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended by repealing and replacing NFPA to read as follows:

NATIONAL FIRE PROTECTION ASSOCIATION

Batterymarch Park, Quincy, MA 02269

All NFPA Standards shall be adopted except:

11C 13E 13R 297 473 550 902 1001 1002 1003 1021 1031 1033  
1035 1041 1201 1221 1402 1404 1405 1410 1500 1561 1581 1901 1911  
1914 1931 1932 1971 1975 1981 1982 1983 1999 1710 1720

ii. Appendix B, SECTION B105.2 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**B105.2 Buildings other than One- and Two-Family Dwellings.** The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table B105.1.

**EXCEPTION:**

i. A reduction in required fire flow of up to fifty (50%) percent, as approved by the Chief, is allowed when the building is provided with an automatic sprinkler system approved pursuant to the adopted NFPA Standards. The resulting fire flow shall not be less than one thousand five hundred (1,500 gpm) gallons per minute (5677.5 L/min.). Reduction of fire flow does not apply to number of fire hydrants required or duration of fire flow required.



- ii. A reduction in required fire flow of up to seventy-five (75%) percent, as approved by the Chief, for warehouse buildings of Type I, Type II, and Type III-N construction and provided with early suppression fast response fire sprinkler systems. Reduction of fire flow does not apply to number of fire hydrants required or duration of fire flow required.

jj. Appendix C, SECTION C104 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

**C104.2** Existing single outlet two and one-half (2.5") inch hydrants shall be changed to an approved steamer style hydrant, when a tentative subdivision or parcel map, merge of lots, change of use or change in intensity of use of an existing building, expansion of an existing structure, or construction increases the required fire flow.

**C104.3** Where water main improvements are required to meet GPM flow and the existing water main has a single two and one-half (2.5") inch outlet fire hydrant, an upgrade of hydrants will be required.

**C104.4** Existing hydrants affected by right of way improvements shall be moved to an approved location at no cost to the fire authority.

kk. Appendix C, Table C105.1 OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to read as follows:

**Table No. C105.1  
Number and Distribution of Fire Hydrants**

<b>Fire Flow Requirement (gpm)</b>	<b>Minimum No. of Hydrants</b>	<b>Average Spacing Between Hydrants<sup>1,3,&amp; 4</sup> (Ft.)</b>	<b>Maximum Distance From Hydrant to any Point on Street or Roadway Frontage<sup>3</sup> (Ft.)</b>
1750 or less	1	300	150
2000-2250	2	300	150
2500	3	300	150
3000	3	300	150
3500-4000	4	300	150
4500-5000	5	300	150
5500	6	300	150
6000	6	250	150
6500-7000	7	250	150
7500 or more	8 or more <sup>2</sup>	200	120

<sup>1</sup> Reduce by one hundred fifty (150' 0") feet for dead-end streets or roadways.

<sup>2</sup> One Hydrant for each one thousand (1,000 gpm) gallons per minute or fraction thereof.

<sup>3</sup> Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants should be provided at not less than one thousand (1,000' 0") foot (305 m) spacing to provide for transportation hazards. In addition, there shall be at least one (1) hydrant at each intersection.

<sup>4</sup> Average spacing between hydrants may be extended to five hundred (500' 0") feet on streets serving one- and two- family dwellings.

II. Appendix C OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

#### SECTION C106 - HYDRANT TYPE

**C106.1.** The Chief shall approve the type of fire hydrants to be installed in public right of way or on private property prior to any such installation.

#### SECTION C107 - HYDRANTS - BOTH SIDES OF A STREET

**C107.1.** Hydrants shall be required on both sides of the street whenever one or more of the following conditions exist:

- i. Streets have median center dividers that make access to hydrants difficult, cause time delay, or create undue hazard or both.
- ii. When there are four or more lanes of traffic.
- iii. Width of street in excess of eighty-eight (88' 0") feet.
- iv. The existing street being widened or having a raised median center divider in the future pursuant to the General Plan Roadway Improvement Plans for the City of Elk Grove.

mm. Appendix D OF THE 2007 CALIFORNIA FIRE CODE is hereby amended to add the following:

#### FORM 1 – EMERGENCY ACCESS GATES AND BARRIERS

#### UNDERSTANDING AND AGREEMENT

I/we understand and agree with the conditions of Appendix D, Form 1 – Emergency Access Gates and Barriers, to install and maintain controlled access to the private street/roadway shown on the attached plans including the parcel number listed below. I/we understand that FAILURE TO COMPLY with any condition herein shall constitute a violation of IFC Section 503.6 and is grounds for immediate revocation of this permit to

have a security gate or barrier. I/we also understand that once the gate system is approved and activated, it shall not be tampered with, without the written approval of the fire department and City of Elk Grove Police Department except by authorized maintenance personnel.

I/WE HAVE READ, UNDERSTAND AND AGREE TO COMPLY WITH ALL CONDITIONS HEREIN.

Gate Contractor: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Parcel Number: \_\_\_\_\_

Final Inspection  
Approval By: \_\_\_\_\_ Date: \_\_\_\_\_

Agency: \_\_\_\_\_

(A signed fire department inspection card may substitute final approval.)

Appendix I is hereby added to THE 2007 CALIFORNIA FIRE CODE to read as follows:

#### APPENDIX I

#### EMERGENCY ACCESS GATES AND BARRIERS

(See IFC Section 503.6)

#### SECTION 11. SCOPE.

**11.1 Scope.** Where a new gate or barrier is installed on a fire access roadway, it shall be authorized by the Chief and meet the minimum requirements of the Sacramento Regional Fire Prevention Officers Association gate standard and APPENDIX D. Private driveways on lightly traveled streets as determined by the City of Elk Grove Public Works Department having jurisdiction, serving one (1) single-family residence may be exempt from the scope of this document. Approval of automatic gates or barriers is subject to the owner accepting responsibility for any future programming requirements by the authority having jurisdiction.

#### SECTION 12. DEFINITIONS.

**12.1 Definitions.** For the purposes of APPENDIX D, certain terms are defined as follows:

- a. ONE HUNDRED (100%) PERCENT CONCURRENCE OF PROPERTY OWNERS will consist of a signed, notarized copy of Appendix D - Form 1, Emergency Access Gates and Barriers, by each property owner served by the gate;
- b. AUTHORITY HAVING JURISDICTION is any agency having statutory authority to enforce federal, state, county, city, or district laws, ordinances or standards;
- c. GATES AND BARRIERS – shall mean a gate, crossbar, door or other obstructive device which is utilized for the purpose of restricting, controlling or obstructing entry or exit by motor vehicles or pedestrians to or from a private roadway and which is not manned on a twenty-four hour, seven day per week basis by a person capable of providing immediate access to a police or fire safety vehicle or person;
- d. PRIVATE STREET OR ROADWAY – shall mean any roadway (not dedicated as public right-of-way) that is owned and maintained by abutting property owners, or association of property owners that is utilized for the purpose of providing vehicular or pedestrian access to a subdivision, apartment complex, condominiums or other residential development or wild land, excluding off-street parking areas, driveways, and driveways to off-street parking areas.
- e. PRIVATE DRIVEWAY - A private way for vehicular travel that provides access from an off-street parking area to a public or private drive.
- f. ULTIMATE EDGE OF RIGHT-OF-WAY - the line furthest from the centerline of the street that has been approved by the City of Elk Grove and recorded on the parcel map for existing or future street improvements.

### SECTION 13. PERMIT.

**13.1. Permit.** A permit issued by the fire authority having jurisdiction to design and install any secured access gate system shall be obtained and approved in writing prior to installation.

### SECTION 15. SUBMITTALS.

A minimum of four (4) complete sets of information shall be submitted to the City of Elk Grove Public Works Department and shall include the following:

**15.1. Approved verification of one hundred (100%) percent Concurrence of Property Owners.** The applicant shall provide, with the gate application, verification that all existing property owners served by gate installation agree to its installation and

operation. Each property owner shall provide a signed copy of the agreement noted as Appendix D, Form 1 – Emergency Access Gates and Barriers (at the end of this document). In addition, the applicant shall provide a copy of the amended “Road Maintenance Agreement” identifying the addition of the gates and operating systems. Where there is only one property owner, Appendix D, Form 1 – Emergency Access Gates and the property owner and the gate contractor must sign Barriers.

**15.2 A Site Plan.** of the property and a site detail of each gate location, drawn to scale (1”=10’, 1”=20’, or 1”=40’), indicating or showing:

- a. Approval stamps from the City of Elk Grove Public Works Department, the Planning Department and the Police Department;
- b. C-10 electrical contractors stamp on the plans for the electrical installation;
- c. C-13 fence contractors stamp on the plans for the installation of the gate;
- d. Plans for gates over six (6’ 0”) feet in height shall bear the stamp of a structural engineer and must be accompanied by a City of Elk Grove Building Permit Number.
- e. Contractor’s company name, address, phone number and contact person.
- f. Exact locations of the entry to the property (i.e. On the east side of Bruceville Road, six hundred twenty (620’ 0”) feet north of the center of Laguna Boulevard);
- g. Assessor’s Parcel Number (located on the property owners tax bill);
- h. Property Lines;
- i. Fire Hydrants, fire department connections;
- j. Location of the “ultimate back of right-of-way”;
- k. Location of the existing edge of pavement or gutter line;
- l. Building footprints, including doors, walkways and fire control room doors;
- m. parking spaces and landscape affected;
- n. Proposed fence, pedestrian gates, vehicle gates;
- o. Existing vehicular access;
- p. Proposed location of Knox® key switch / Knox® box(s); and

q. Physical address.

**15.3 Product specifications** shall be provided that include:

- a. Method of operation;
- b. UL listing numbers of equipment used; and
- c. Manufacturer's specification sheets for electrical gate controller.

**15.4 Plan review and inspection fees** will be collected per each agency's approved fee schedule.

#### **17.04.100 High Explosives.**

In accordance with the provisions of Division 11, EXPLOSIVES, Part 1, HIGH EXPLOSIVES, of the Health and Safety Code (Sections 12000-12401), the Chief of Police shall have the primary responsibility for the enforcement of the provisions therein.

Wherever there appears in the 2006 edition of the International Fire Code any rule, regulation or provision that is in conflict with the Health and Safety Code, such rule, regulation or provision is hereby repealed.

#### **17.04.110 Public Safety 800 Mhz Radio Building Amplification System**

A. Requirement for approved emergency responder radio coverage in buildings. All buildings shall have approved indoor radio coverage for emergency responders. Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than twenty (20%) percent to, any building or structure or any part thereof, or cause the same to be done which fails to support adequate radio coverage for the Sacramento Regional Radio Communication System (SRRCS) and Sacramento Regional Fire and Emergency (SRFECC) radio communication system. Determining the existence of approved radio coverage and the correction of any deficiencies shall be the responsibility of the building owner. Existing buildings, buildings of one or two single family dwellings, or those below minimum areas as determined by the fire code official may be exempted from this requirement by the fire code official.

B. Approved Radio Coverage. Approved radio coverage shall conform to the current standards of the Cosumnes Community Services District Fire Department. These standards shall define the acceptable indoor signal levels to provide ninety (90%) percent reliability of the SRRCS and SRFECC Public Safety Radio System inside structures. The fire code official may determine exceptions and additions to these standards as required to protect the integrity of the public safety radio system and provide acceptable signal levels in structures critical to public health and safety.

C. Indoor Public Safety Radio Enhancement Systems. If required by this code, any indoor public safety radio enhancement system must comply with current standards set by the Cosumnes Community Services District Fire Department, and the regulations of the Federal Communications Commission. Systems shall be inspected, maintained, and modified as necessary to provide approved emergency responder radio coverage. If changes in FCC regulations or modifications to the SRRCS and SRFEC Public Safety Radio System require modifications to a public safety radio enhancement system, the building owner shall make necessary changes to conform to the existing standard.

1. Annual Tests. When an in-building radio system is required, the building owner shall test all active components of the system, including but not limited to amplifiers, power supplies and backup batteries, a minimum of once every twelve (12) months. Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance. Backup batteries and power supplies shall be tested under load for a period of one (1) hour to verify that they will properly operate during an actual power outage. If within the one (1) hour test period, in the opinion of the testing technician, the battery exhibits symptoms of failure, the test shall be extended for additional one (1) hour periods until the testing technician confirms the integrity of the battery. All other active components shall be checked to determine that they are operating within the manufacturer's specifications for the intended purpose.
2. Five-Year Tests. In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five (5) years to ensure that radio system continues to meet the requirements of the original acceptance test. The procedure set forth above shall apply to such tests.
3. Qualifications of Testing Personnel. All tests shall be conducted, documented and signed by a person in possession of a current FCC license, or a current technician certification issued by the Associated Public Safety Communications Officials International (APCO) or the Personal Communications Industry Association (PCIA). All test records shall be retained on the inspected premises by the building owner and a copy submitted to the fire department officials.

D. Field Testing. Police and fire personnel, after providing reasonable notice to the owner or his representative, shall have the right to enter onto the property to conduct field-testing to be certain that the required level of radio coverage is present.

E. Exemptions. This section shall not apply to buildings less than fifty thousand (50,000 ft<sup>2</sup>) square feet or any R-3 occupancy.

#### **17.04.120 Flammable and Combustible Liquids and Liquefied Petroleum Gases**

Applications for permits for the installation or modification of above ground tanks for the storage of flammable and combustible liquids shall be made to the Building Inspection Division of City of Elk Grove, and the fire department having jurisdiction.

Files, records, and copies of all permits shall be kept in the Building Inspection Division and will be available on request. The Building Inspection Division shall instruct the applicant as to the necessity of also obtaining concurrent approval from the fire department for issuance of a permit.

Applicants for permits for the installation or modification of underground tanks for the storage of hazardous materials, including flammable and combustible liquids, shall be made to the Environmental Health Branch of Sacramento County, and the fire department having jurisdiction. Files, records, and copies of all permits shall be kept in the Environmental Health Branch and will be available on request. The Environmental Health Branch shall instruct the applicant as to the necessity of also obtaining concurrent approval from the fire department for issuance of a permit.

Applications for permit for the installation or modification of liquefied petroleum gases shall be made to the Building Inspection Division of the City of Elk Grove, and the fire department having jurisdiction, whose decisions shall be final.

#### **17.04.130 Structural Fires**

The Chief shall notify all occupants or owners of structures, which have suffered damage by fire, that such structures or buildings must be inspected before any repairs thereto are made. A permit covering the structural, electrical and plumbing repairs shall be obtained from the City of Elk Grove Building Inspection Division. The Chief shall report all such structural fires to the City of Elk Grove Building Inspection Division on a form prescribed by the Division within twenty-four (24) hours after the occurrence of such fire.

#### **17.04.140 Repeal of Conflicting Ordinances.**

All former fire prevention ordinances or parts thereof conflicting or inconsistent with the provision of this ordinance or of the code hereby adopted are hereby repealed.

### **Chapter 17.12**

#### **WEED CONTROL**

Sections:

17.12.010 Findings.



17.12.020 Definitions.

17.12.030 Concurrent authorities.

17.12.040 Enforcement.

17.12.050 Prohibited conduct.

17.12.060 Firebreak required.

17.12.070 Penalty – Infraction.

**17.12.010 Findings.**

The City Council finds and declares that the uncontrolled growth and/or accumulation of grass, weeds or other materials or obstructions on sidewalks, streets, and on lands or lots is dangerous or injurious to neighboring property and the health or welfare of residents of the vicinity and is a public nuisance in that it creates a condition that reduces the value of private property, promotes blight and deterioration, invites plundering, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, creates a harbor for rodents and insects and is injurious to the health, safety and general welfare.

**17.12.020 Definitions.**

As used in this chapter:

A. "Garbage" includes, but is not limited to, the following: waste resulting from the handling of edible foodstuffs or resulting from decay, and solid or semisolid putrescible waste, and all other mixed, nonrecyclable wastes which are generated in the day-to-day operation of any business, residential, governmental, public or private activity, and may include tin cans, bottles and paper or plastic, or other synthetic material, food or beverage containers.

B. "Refuse" includes rubbish and garbage, as defined herein.

C. "Rubbish" includes all the following, but is not restricted to nonputrescible wastes, such as paper, cardboard, grass clippings, tree or shrub trimmings, wood, bedding, crockery, rubber tires, construction waste and similar waste materials.

D. "Weeds," as used in this chapter, includes any of the following:

1. Weeds which bear seeds of a downy or wingy nature;

2. Sagebrush, chaparral, and any other brush or weeds which attain such hard growth as to become, when dry, a fire menace to adjacent improved property;
  3. Weeds and grasses which are otherwise noxious;
  4. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health;
  5. Dry grass, stubble, brush, litter, or other flammable material which endangers the public safety by creating a fire hazard.
- E. "Weeds, accumulation of" includes, but is not limited to, permitting or allowing the growth of weeds.

#### **17.12.030 Concurrent authorities.**

This chapter is not the exclusive regulation for weed and refuse abatement within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the county, the state, or any other legal entity or agency having jurisdiction.

#### **17.12.040 Enforcement.**

The division of authority for enforcement of this chapter shall be as follows:

- A. The Chief of the Cosumnes Community Services Fire Department shall have authority to enforce this chapter and issue citations for violations in their respective districts;
- B. The County Fire Warden shall have authority to enforce this chapter in the Cosumnes Community Services District upon request of the Chief of the Cosumnes Community Services District Fire Department.

#### **17.12.050 Prohibited conduct.**

A person shall not dump weeds or refuse, nor shall he permit the dumping of weeds or refuse, nor shall he permit the accumulation of weeds or refuse, on his property or on any other property in such a manner as to constitute a fire hazard.

#### **17.12.060 Firebreak required.**

All dry grass, brush, vines or other dry vegetation shall be cleared for an area of not less than thirty (30' 0") feet from all structures, combustible fences, vehicles and combustible storage. The Chief of the Cosumnes Community Services Fire Department may require additional clearances when topographical or geographical conditions warrant said action.

### **17.12.070 Penalty – Infraction.**

A. Notwithstanding the provisions of EGMC Chapter 1.04 and ECMC Sections 17.04.080 and 17.04.090 or the provisions of any other section of this code, violation of any of the provisions of any other section of this code, violation of any of the provisions of this chapter, or failure to comply with any of the regulatory requirements of this chapter is an infraction subject to the procedures described in Sections 19(c) and 19(d) of the California Penal Code.

B. Every violation of this chapter shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

## **TITLE 18**

**(RESERVED)**

## **TITLE 19**

### **TREES**

#### **Chapters:**

**19.04 Regulations**

**19.08 Dutch Elm Disease Control**

**19.12 Tree Preservation and Protection**

#### **Chapter 19.04**

### **REGULATIONS**

#### **Sections:**

19.04.010 Purpose.

19.04.020 Word construction.

19.04.030 Definitions.

19.04.050 Heritage and landmark trees.

19.04.060 Planting easements.

19.04.070 Responsibility.

19.04.080 Public utilities and easements.

19.04.090 City parks and grounds.

19.04.100 Tree permits.

19.04.110 General regulations.

19.04.120 Clearance requirements.

19.04.125 Exemption of City from Solar Shade Control Act.

19.04.130 Public nuisances.

19.04.140 Abatement procedures.

19.04.150 Interference with authorized personnel.

19.04.160 Appeals – Procedure.

19.04.170 Enforcement.

**19.04.010 Purpose.**

In order to promote the health, safety and enhance the beauty and general welfare of the City of Elk Grove, it is hereby declared to be the policy of the City to plant, maintain, protect, preserve and to regulate the planting, maintaining, protecting and preserving of public trees and landscaping; to eliminate dangerous conditions caused by trees and shrubs that may result in injuries to persons or property; to protect all trees within the City against the spread of disease or pests, and to provide for the special protection of heritage and landmark trees within the City. This chapter shall be known as and may be cited as and referred to as the tree ordinance.

**19.04.020 Word construction.**

Unless the provisions or the context otherwise requires, the following rules of construction and definitions shall govern the construction of this chapter. The singular number includes the plural, and the plural, the singular. The masculine gender includes the feminine. The present tense includes the past and future tenses, and the future, the present. “Shall” is mandatory and “may” is permissive.

#### **19.04.030 Definitions.**

For the purpose of this chapter the following words and terms have the following meanings:

- A. "City" means the City of Elk Grove;
- B. "City park" means any park or grounds under the supervision of the Parks Director;
- C. "Council" means the City Council of the City of Elk Grove;
- D. "Easement" means any City utility easement, drainage easement or sanitary sewer easement;
- E. "Heritage tree" means a California oak tree growing on any land in the City of Elk Grove, including privately owned land, with a trunk sixty (60") inches or greater in girth measured four and one-half (4' 6") feet above the ground;
- F. "Landmark tree" means an especially prominent or stately tree on any land in the City of Elk Grove, including privately owned land;
- G. "Parks Director" means the Director of the Department of Parks and Recreation of the City, or his agent;
- H. "Permittee" means a person who has been granted a permit as provided in this chapter;
- I. "Person" includes a natural person, legal owner, firm, association, corporation, co-partnership, trustee, receiver, utility, or an agent or employee thereof;
- J. "Planning Director" means the Planning Director of the Planning Department of the City of Elk Grove, or his or her agent;
- K. "Planting easement" means an area of land, usually a strip of land adjoining a street right-of-way, which has been dedicated for the purpose of growing trees, shrubs, or other vegetation;
- L. "Public premises" includes City-owned properties utilized for pumping plants, sewage treatment plants, well sites, and other City properties utilized by the Public Works Director;
- M. "Public tree" means a tree or shrub planted or maintained, or both, by the City on an easement, planting easement, street, City park or public premises;
- N. "Public Works Director" means the Public Works Director of the Public Works Department of the City of Elk Grove, or his or her agent;

O. "Street" includes the right-of-way width of any City-maintained street, avenue, boulevard, line, walk, road, parkway, alley, or other right-of-way for highway purposes, as indicated on the master plan for streets and highways or determined by the Public Works Department;

P. "Street tree" means any tree whose trunk is wholly or partially located within a City street or planting easement. A "street tree" is always a public tree;

Q. "Tree" includes shrub.

#### **19.04.050 Heritage and landmark trees.**

A. When an application is made for a variance, consideration shall be given to the presence of a landmark or heritage tree on the parcel of real property in determining whether a variance shall be granted.

B. Whenever feasible the Public Works Director shall modify standard street sections and make changes in street alignment to avoid the removal or damage of heritage and landmark trees. Increased right-of-way or construction costs caused by such modification shall not receive their usual consideration in the planning and design processes.

#### **19.04.060 Planting easements.**

A. Developers of new subdivisions shall convey to the City planting easements along all City streets. The easements shall measure no less than five feet in depth and shall extend across the entire width of the lot. The easements shall be located adjacent to the easements required for underground utilities and facilities.

Developers are not required to convey planting easements encumbering single-family residentially zoned lots that exceed one acre in area and have street frontage in excess of one hundred twenty-five (125' 0") feet.

The property owner, lessee or tenant shall not be excluded from any of his inherent rights in the planting easements that do not conflict with the satisfactory planting and maintaining of trees and shrubs therein or do not conflict with other City or state regulations.

B. The Public Works Director shall require the conveyance of the planting easements as provided herein and shall cause the provisions of this section to be enforced.

C. The Parks Director, Planning Director, and the Public Works Director shall encourage and assist private parties and civic organizations to convey planting easements to the City.

D. All trees and shrubs within the planting easements at the time the easements are conveyed to the City shall thereupon become public trees and shall be subject to the provisions of this chapter.

**19.04.070 Responsibility.**

The planting, caring and removing of public trees located within streets, easements, planting easements, and public premises shall be under the supervision and control of the Public Works Director. The planting, caring, and removing of public trees within City parks shall be under the supervision and control of the Parks Director.

**19.04.080 Public utilities and easements.**

The Public Works Director may prohibit and otherwise regulate the planting of trees upon any City utility easement, drainage or sanitary sewer right-of-way, if he considers such planting detrimental to their use. Trees shall not be planted upon any such right-of-way or easement without first obtaining a permit from the Public Works Director as provided in EGMC Section 19.04.100. Each permit of this type shall be subject to the condition that if on any future date the Public Works Director determines that a tree planted pursuant to the permit is detrimental to the use of the right-of-way or easement, the tree shall be considered a public nuisance and be subject to abatement as provided in EGMC Section 19.04.140.

**19.04.090 City parks and grounds.**

A. The planting, caring and removing of all trees, shrubs, lawns and other plant life in City parks and the grounds of all City-owned buildings are under the supervision and control of the Parks Director.

B. No person, except by order of the Parks Director, shall plant, transplant, move, separate, trim, prune, cut above or below the ground, disrupt, alter or take any other action upon any tree or other plant life in City parks and grounds.

C. In selecting plantings for such areas, the Parks Director is not bound by the master tree list and may select any plantings which he determines to be appropriate for such areas.

D. Architects and others preparing plans for the landscaping of City buildings shall consult with the Parks Director during the preparation of such plans, and the final plans shall be submitted by the Public Works Director to the Parks Director for review and approval prior to advertising for bids.

#### **19.04.100 Tree permits.**

A permit shall be required before any person shall plant, transplant, move, separate, trim, prune, cut above or below the ground, disrupt, alter or do surgery upon any public tree located on an easement, planting easement, street, or public premises, irrespective of whether the tree is alive or dead.

A. The Public Works Director shall prescribe the form of the permit which shall be valid for a period of six months;

B. The City Council may require a fee for the issuance of the permit. The fee shall be in an amount calculated to recover the costs involved in processing the permit and any related field investigation;

C. Permits shall be signed by the Public Works Director or his designee, and shall be subject to such conditions as he determines to be necessary taking into consideration the safety, health and general welfare of the public, the location of utilities, driveways, traffic and street lights and other characteristics of the area;

D. In determining whether a permit should be issued for removal of a tree, the Public Works Director may hold a public hearing or may use other appropriate means to determine the desires of residents in the immediate vicinity of the tree, and he shall give their desires such weight as he deems appropriate in relation to other relevant considerations.

The Director may require that a permittee plant one or more trees in place of the one removed, in the same location or vicinity;

E. The Public Works Director may require a permittee to furnish a satisfactory bond, cash deposit or other security satisfactory to the Public Works Department, to ensure that the conditions of the permit will be fulfilled;

F. Except where public safety is involved, a permit shall not be issued to trim or remove a public tree for the singular purpose of providing better visibility;

G. Permits shall not be issued for the planting of any tree which is not in accordance with the master tree plan unless the Public Works Director determines that the characteristics of the substituted tree are substantially the same as those of a tree permitted by the plan and the Parks Director concurs in the substitution;

H. Each tree planted pursuant to a permit on a planting easement, street or public premises shall become a public tree. The permit shall contain a statement to this effect;

I. It is unlawful for a permittee to fail, refuse, or neglect to plant a tree required by a permit or to fail to fulfill any condition imposed by the Director when issuing the permit.



**19.04.110 General regulations.**

No person shall, without a written permit from the Public Works Director, do or cause to be done by others any of the following acts:

- A. Secure, fasten or run any rope, wire, sign, unprotected electrical installation or other device or material to, around, or through a public tree;
- B. Break, injure, deface, kill or destroy a public tree or permit any fire to burn where it will injure any public tree;
- C. Permit any chemical, gas, smoke, salt brine, oil or other injurious substance to seep, drain or be emptied upon, above or below any public tree;
- D. Excavate any ditch, tunnel, or trench or lay any drive within a radius of 10 feet from any public tree;
- E. Erect, alter, repair or raze any building or structure without placing suitable guards around all nearby public trees which may be injured by such operations;
- F. Remove any guard, stake or other device or materials intended for the protection of a public tree or close or obstruct any open space about the base of a public tree designed to permit access of air, water and fertilizer.

**19.04.120 Clearance requirements.**

- A. No tree or shrub shall be planted or maintained contrary to the provisions of Chapter 12.12 EGMC.
- B. No tree shall be planted within five feet of the right-of-way line of any public street, except as otherwise authorized by the Public Works Director. The right-of-way line shall be that which is shown on the master plan for streets and highways or as determined by the Public Works Department.

The purpose of this requirement is to provide a safe corridor adjacent to City streets for pedestrian or other uses.

**19.04.125 Exemption of City from Solar Shade Control Act.**

The City of Elk Grove shall be exempt from the provisions of the Solar Shade Control Act.

**19.04.130 Public nuisances.**

Any tree located on public or private property which in the opinion of the Public Works Director endangers the life, health, or safety of persons or public or private property, or

is infected or affected by parasites, disease, or pests, interferes with or obstructs a public storm drain, sanitary sewer, drainage canal, City utility easement, alley or street is hereby declared to be a public nuisance and subject to the provisions of EGMC 19.04.140.

**19.04.140 Abatement procedures.**

The following procedures shall be followed when abating or correcting a condition relative to a public nuisance tree:

A. The owner or occupant of property on which the tree is located shall be notified in writing by certified mail that the tree shall be removed, sprayed or otherwise abated;

B. The owner or occupant of property on which the tree is located shall have the right to appeal to the City Council the determination of the Public Works Director;

C. The owner or occupant of such premises shall have fifteen (15) days from the time of the mailing of the aforesaid notice to either comply with the terms of the notice of abatement or corrective action or to file an appeal with the City Council concerning the contemplated action of the Public Works Director;

D. If the owner of such premises or his agent refuses or neglects to comply with the notice or to appeal the order of the Public Works Director within the time specified, the Public Works Director shall cause the tree to be sprayed, removed or otherwise abated.

The Public Works Director shall keep an account of the cost of abatement. He shall submit to the City Council for confirmation an itemized written report showing such cost.

A copy of the report shall be posted for at least three days prior to its submission to the City Council on or near the chamber door of the City Council with a notice of the time when the report will be submitted to the City Council for confirmation.

At the time fixed for receiving and considering the report, the City Council shall hear it and any objections of the property owner liable to be assessed for the work of abatement. The City Council may modify the report if it is deemed necessary, after which, by order or resolution, the report shall be confirmed.

The cost of abatement shall constitute a special assessment against the parcel of land concerned. After the assessment is made and confirmed, it is a lien on the parcel of land.

After confirmation of the report, a copy shall be given to the Sacramento County Assessor and the Finance Director who shall add the amount of the assessment to the next regular tax bill levied against the parcel of land.

The amount of the assessment shall be collected at the same time and in the same manner as ordinary City taxes are collected. If delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as provided for ordinary City taxes.

Laws relating to the levy, collection and enforcement of City taxes apply to such special assessment taxes.

The City Council may order refunded all or part of a tax paid pursuant to this section if it finds that all or part of the tax has been erroneously levied. The tax or part shall not be refunded unless a claim is filed with the City Council on or before November 1st after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his guardian, executor or Director.

The lien of the assessment shall have the priority of the taxes with which it is collected.

**19.04.150 Interference with authorized personnel.**

It is unlawful for any person to prevent, delay or interfere with any work being done under the provisions of this chapter whether the work is done by an employee of the City or a person or firm performing work for the City pursuant to contract, hire or assignment.

**19.04.160 Appeals – Procedure.**

Any person aggrieved by any act or determination of a City official or employee in the exercise of the authority herein mentioned shall have the right of appeal to the City Council. The following procedure shall govern such appeals:

A. Notice of Appeal. An appeal shall be perfected by filing written notice of appeal with the City Clerk. The notice of appeal shall be filed within 15 days after the act or determination which prompted the appeal;

B. The City Clerk shall notify the Public Works Director of the appeal. The Director shall forthwith transmit to the City Clerk all papers, maps, and other matters of record upon which the exercise of authority was based;

C. Upon receipt of notice of appeal the City Clerk shall set a date for hearing before the City Council. Notice of such hearing shall be given by publication in a newspaper of general circulation at least 10 days prior to the hearing. Notice of hearing may also be given by mailing, postage prepaid, the time and place of such hearing to all persons who, at the time of public hearing held by the Public Works Director relative to a tree removal, requested such notice be given by mail. Any failure to mail notices as provided

above if notice was given by publication shall not invalidate the proceedings before the City Council;

D. The City Council may deny or grant the appeal in whole or in part.

#### **19.04.170 Enforcement.**

The Public Works Department is charged with the responsibility of enforcing the provisions of this chapter. No oversight or dereliction on the part of employees of the Public Works Department or any other employee or official of the City vested with the duty or authority to issue permits, conduct investigations and enforce the provisions herein shall legalize, authorize, waive, or excuse any violation of any of the provisions of this chapter.

The Public Works Director or his authorized representatives may upon the presentation of his credentials go upon any premises at any reasonable time for the investigation and inspection of any tree which is suspected to be in violation of this chapter, after having given the owner or occupant thereof at least five days' prior notice of the date of inspection.

### **Chapter 19.08**

#### **DUTCH ELM DISEASE CONTROL**

Sections:

19.08.010 Finding.

19.08.020 Definitions.

19.08.030 Public nuisance.

19.08.040 Inspections and entry on private property.

19.08.050 Declaration of public nuisance.

19.08.060 Contents of resolution.

19.08.070 Number of streets which may be included in the resolution.

19.08.080 Notices – Manner of posting.

19.08.090 Notices – Heading.

19.08.100 Form of notice.

- 19.08.110 Time of notice posting.
- 19.08.120 Hearing of objections.
- 19.08.130 Decision or objections – Acquiring jurisdiction.
- 19.08.140 Decision of City Council is final.
- 19.08.150 Order to abate nuisance – Form of order.
- 19.08.160 Urgency – Cut and stored elm wood.
- 19.08.170 Entry upon private property to abate nuisance.
- 19.08.180 Removal of elm wood by property owner.

**19.08.010 Finding.**

The City Council has determined that there are many elm (and zelkova) trees growing on public and private premises within the City of Elk Grove, the loss of which would substantially depreciate the value of public and private premises and impair the safety, good order, general welfare and convenience of the public. The City Council has determined that the health and life of such trees is threatened by a fatal disease known as Dutch elm disease. The City Council hereby declares its intention to control and prevent the spread of such disease and the insect pests and vectors which carry such disease and declares the Dutch elm disease and elm bark beetles which carry such disease to be public nuisances.

**19.08.020 Definitions.**

- A. “Administrative regulations” means regulations promulgated jointly by the Director , and approved by the City Council, specifying procedures for the removal and destruction of elm trees or portions thereof.
- C. “Director” means the Planning Director of the Planning Department of the City of Elk Grove or their designee assistants, deputies, or authorized employees or agents.
- D. “Elm tree” includes any of the following: any living or standing elm (or zelkova) tree or part thereof, or any dead elm (or zelkova) tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.

#### **19.08.030 Public nuisance.**

The following things are public nuisances whenever they may be found within the City of Elk Grove:

A. Any living or standing elm tree or part thereof infected to any degree with the Dutch elm disease fungus, *Ceratocystis ulmi*; or which harbors any of the elm bark beetles, *Scolytus multistriatus* or *Hylurgopinus rufipes*;

B. Any dead elm tree or dead part of any elm tree, including logs, branches, stumps, firewood or other elm material from which the bark has not been removed.

#### **19.08.040 Inspections and entry on private property.**

A. The Director or his or her designee shall inspect all premises and places within the City of Elk Grove as often as practicable to determine whether any condition described in EGMC Section 19.08.030 exists therein. They may enter upon private property at any reasonable time for the purposes of carrying out any of the duties assigned to them under this chapter. If entry is refused, the Director shall have recourse to every remedy provided by law to secure lawful entry.

B. Whenever necessary to determine the existence of Dutch elm disease or elm bark beetles in any tree, the person inspecting such tree may remove or cut specimens from the tree.

#### **19.08.050 Declaration of public nuisance.**

The Director may declare by resolution as public nuisance, and abate, those conditions set forth in EGMC Section 19.08.030 wherever those conditions are found upon public or private property in the City of Elk Grove.

#### **19.08.060 Contents of resolution.**

The resolution shall refer to the property upon which or in front of which the nuisance exists by giving its lot and block number according to the official or City assessment map. If only a portion of the elm tree is to be removed, the resolution shall so indicate.

#### **19.08.070 Number of streets which may be included in the resolution.**

Any number of private or public parcels of property may be included in one resolution.

#### **19.08.080 Notices – Manner of posting.**

After passage of the resolution, the Director shall cause notices to be conspicuously posted on or in front of the property on which the nuisance exists and/or mailed to the property owner of record.

**19.08.090 Notices – Heading.**

If posted on the property, the heading of the notices shall be “Notice to Destroy Elm Tree” or “Notice to Destroy Elm Wood,” whichever is appropriate, in letters not less than one (1”) inch in height.

**19.08.100 Form of notice.**

The notice shall be substantially in one of the following forms:

**NOTICE TO DESTROY ELM TREE**

Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council passed a resolution declaring that an elm (or zelkova) tree or trees existing upon or in front of the property in the City of Elk Grove, and more particularly described in the resolution, and that they constitute a public nuisance which must be abated by being removed and destroyed. Otherwise they will be removed and destroyed by the City of Elk Grove. Reference is hereby made to the resolution for further particulars. A copy of said resolution is on file in the office of the City Clerk.

All property owners having any objections to the proposed removal of the elm tree or trees are hereby notified to attend an administrative hearing to be held \_\_\_\_\_, when their objection will be heard and given due consideration.

Dated: \_\_\_\_\_

or, if applicable:

**NOTICE TO DESTROY ELM WOOD**

Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council passed a resolution declaring that an elm (or zelkova) tree or trees, existing upon or in front of the property in the City of Elk Grove, and more particularly described in the resolution, and that they constitute a public nuisance which must be abated by the removal and destruction of dead wood contained therein in accordance with administrative regulations promulgated by the Planning Director. Otherwise, such wood will be removed and destroyed by the City of Elk Grove. Reference is hereby made to the resolution for further particulars. A copy of said resolution is on file in the office of the City Clerk.

All property owners having any objections to the proposed removal of the dead elm wood are hereby notified to attend an administrative hearing to be held \_\_\_\_\_, when their objections will be heard and given due consideration.

Dated: \_\_\_\_\_

**19.08.110 Time of notice posting.**

The applicable notices shall be posted at least seven days prior to the time for the administrative hearing per the process outlined in the Zoning Code.

**19.08.120 Hearing of objections.**

At the time stated in the notices, the Director shall hear and consider all objections to the proposed removal and destruction of elm trees or dead wood contained therein, whichever is applicable. It may continue the hearing from time to time.

**19.08.130 Decision or objections – Acquiring jurisdiction.**

By motion or resolution at the conclusion of the hearing, the Director shall allow or overrule any objections. At that time the City acquires jurisdiction to proceed and perform the work of removal and destruction of elm trees or dead wood contained therein.

**19.08.140 Decision of the Director may be appealed.**

The decision of the Director may be appealed per the process outlined in the Zoning Code.

**19.08.150 Order to abate nuisance – Form of order.**

If objections have not been made or after the administrative hearing, it shall order the Director to abate the nuisance by having the elm tree or trees removed and destroyed or by having the dead wood contained therein removed and destroyed. The order shall be made by motion or resolution.

**19.08.160 Urgency – Cut and stored elm wood.**

Wherein the Director shall during their inspections discover elm wood that has been cut, or cut and stored, which is infected or may be infected by Dutch elm disease fungus, said Director may, in order to prevent the storage, movement or sale of said elm wood and thereby the spread of the fungus causing Dutch elm disease, act to cause the disposal of said wood in as expeditious manner as practical.

For purposes of this section, other sections contained herein commencing with EGMC Section 19.08.050 through and including EGMC Sections 19.08.150 are not applicable, as the procedural delay that may occur may cause eminent spreading of the fungus to other trees within the vicinity.

**19.08.170 Entry upon private property to abate nuisance.**



The Director may enter upon private property to abate the nuisance. It is unlawful and an infraction for any person to interfere with or in any way impede the abatement of a nuisance.

**19.08.180 Removal of elm wood by property owner.**

Before the Director arrives, any property owner may remove and destroy the elm trees, wood or elm material at their own expense. The method of removal and destruction must be approved in advance by the Director as being in accordance with administrative regulations.

**Chapter 19.12**

**TREE PRESERVATION AND PROTECTION**

Sections:

19.12.010 Short term.

19.12.020 Purpose and intent.

19.12.030 Interpretation and severability.

19.12.040 Definitions.

19.12.050 Exemptions.

19.12.060 Tree permit.

19.12.065 Prohibition.

19.12.070 Jurisdiction.

19.12.080 Application procedure.

19.12.090 Decision criteria.

19.12.100 Tree removal provisions.

19.12.110 Consideration of permits.

19.12.120 Appeal.

19.12.130 Development control measures.

19.12.140 Replanting security.

- 19.12.150 Other species of trees.
- 19.12.160 Grading beneath tree driplines.
- 19.12.170 Emergencies.
- 19.12.180 Fees.
- 19.12.190 Stop work order.
- 19.12.200 Suspension, revocation and restoration.
- 19.12.210 Violation a misdemeanor and nuisance.
- 19.12.220 Tree preservation fund.
- 19.12.230 Cumulative penalties.

**19.12.010 Short term.**

This chapter shall be known, and may be cited, as the tree preservation ordinance.

**19.12.020 Purpose and intent.**

For at least several centuries prior to the arrival of the first Spanish explorers in California, native oak trees existed as dominant and magnificent features in the landscape of the Central Valley of California. These trees provided a predominant food staple for original Indian inhabitants, and a major source of firewood and building material for early explorers and settlers. Over the years, the vast majority of these trees have been cleared to accommodate agriculture, burned as firewood and removed to facilitate urban development. Only a small vestige of the original oak woodland forests remains today. The removal of oak trees continues to the present time, and occurs at a much faster pace than natural regeneration. Thus, it has become imperative that an ordinance be established to preserve and protect remaining native oak trees as significant, integral, and outstanding examples of the historical heritage of the City of Elk Grove.

Furthermore, it is recognized that the preservation of trees enhances the natural scenic beauty, sustains the long term potential increase in property values which encourages quality development, maintains the original ecology, retains the original tempering effect of extreme temperatures, increases the attractiveness of the City to visitors, helps to reduce soil erosion, and increases the oxygen output of the area which is needed to combat air pollution.

For these reasons, in order to promote the health, safety, and general welfare; to preserve and protect significant historical heritage values; to enhance the beauty of the City of Elk Grove; and to complement and strengthen zoning, subdivision and land use standards and regulations, while at the same time recognizing individual rights to develop private property, the City Council adopts the ordinance codified in this chapter, establishing basic standards and measures for the preservation and protection of trees.

It shall be the policy of the City to preserve all trees possible through its development review process.

**19.12.030 Interpretation and severability.**

The provisions of this chapter shall be liberally construed to effectuate their purposes. If any section, clause, provision or other portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby. Interpretation of this chapter rests with the Planning Commission.

**19.12.040 Definitions.**

For the purposes of this chapter, certain words or terms used herein shall be interpreted as follows: words in the present tense include the future; words in the singular include the plural number.

“Approving body,” as used in this chapter, shall be any one of the following: City Council, Planning Director, or Planning Commission.

“dbh” means diameter at breast height and is the diameter of a tree measured at four and one-half (4’ 6”) feet above the ground while standing on the high side of the tree. The diameter may be calculated by use of the following formula:

$$\text{diameter} = \text{circumference} / 3.142$$

“Discretionary projects,” as used in this chapter, shall be a project that must be approved by one of the following approving bodies: City Council, Planning Commission, or Planning Director. “Discretionary projects” shall include, but are not limited to: a special development permit, a parcel map, a parking reduction permit, a rezone, a site plan approval permit, a subdivision map, a variance, or a conditional use permit.

“Drip line” means an area delineated by projection of the periphery of the crown area of a tree down to the ground surface.

“Native oak tree” shall include any of the following: valley oak (*Quercus lobata*), interior live oak (*Quercus wislizenii*), blue oak (*Quercus douglasii*), or oracle oak (*Quercus morehus*).

“Public land” shall include all lands in public trust, federal, state, and local, including, but not limited to, public rights-of-way, easements, and parks.

“Public trees” shall be any tree with one-half (0.5), or more, of its trunk or branches on or above public land.

“Private land” shall include all land owned by private interest, and not designated public land.

“Tree,” as used in this chapter, shall mean any living native oak tree having at least one (1) trunk of six (6”) inches or more in diameter measured four and one-half (4’ 6”) feet above the ground, or a multi-trunked native oak tree having an aggregate diameter of ten (10”) inches or more, measured four and one-half (4’ 6”) feet above the ground (dbh).

“Tree permit” is an authorization by the Public Works Director for the removal of a tree.

“Designated urban area” means the area beginning at the crossing of the Sacramento River by Interstate 880; thence northeasterly on 880 to its intersection with the east main drainage canal; thence northeasterly on 880 to its intersection with the east main drainage canal; thence northerly to the County Line; thence easterly along the County Line to the City of Folsom; thence southerly along the City Limits to Highway 50; thence easterly on Highway 50 to Prairie City Road, thence southerly on Prairie City Road to White Rock Road; thence southwesterly on White Rock Road to Grantline Road to Douglas Road; thence westerly on Douglas Road to Sunrise Boulevard; thence southerly on Sunrise to Jackson Highway; thence westerly on Jackson Highway to Bradshaw Road; thence southerly on Bradshaw Road to Calvine Road; thence westerly on Calvine Road to Highway 99; thence southerly on Highway 99 to Bond Road; thence easterly on Bond Road to Waterman Road; thence southerly on Waterman Road to Grantline Road; thence southwesterly on Grantline Road to Highway 99; thence northwesterly on Highway 99 to Elk Grove Boulevard; thence westerly on Elk Grove Boulevard to Interstate 5; thence northerly on Interstate 5 to the City Limits; thence westerly along the City Limits to the Sacramento River; thence northerly on the Sacramento River to the point of beginning.

#### **19.12.050 Exemptions.**

Except as provided in subsection (C) of this section, this chapter shall not apply to:

A. Any lot located in the designated urban area:

1. Created by a final subdivision map, consisting of five (5) or more lots;
2. Each lot having an area of ten thousand (10,000 ft<sup>2</sup>) square feet or less; and

3. Developed with a single-family detached house, a duplex or a halfplex.

B. Any lot located in any of the following named subdivisions including all units thereof: Sierra Oaks Vista, Sierra Oaks, Arden Park Vista and Arden Oaks.

C. No land located in the designated urban area and within the 100-year floodplain shall be exempt from the provisions of this chapter.

**19.12.060 Tree permit.**

No person shall trench, grade or fill within the dripline of any tree or destroy, kill or remove any tree as defined, in the designated urban area of the City, on any property, public or private, without a tree permit, or unless authorized as a condition of a discretionary project approval by the City Council, Planning Commission, or the Planning Director.

**19.12.065 Prohibition.**

No City agency or department shall issue tree cutting, encroachment or any other permits which purport to authorize a use, construction, or other activity which is subject to the provisions of this chapter or the Zoning Code prior to review and approval as provided in this chapter.

**19.12.070 Jurisdiction.**

A. Private Land Not in Conjunction with Other Discretionary Development. The preservation or removal of trees within privately owned land and not in conjunction with a previously approved discretionary development project shall be the responsibility of the Public Works Director.

B. Discretionary Project. The preservation or removal of trees as a condition of approval of a discretionary project shall be the sole and continuing responsibility of the approving body which granted approval of the project.

C. Parks. The preservation or removal of trees within parks, parkways, and public recreation easements shall be the responsibility of the Public Works Director.

D. Other Public Land. Preservation or removal of trees within other City-owned lands or public easements shall be the responsibility of the Public Works Director.

**19.12.080 Application procedure.**

Any person desiring to cut down, destroy or remove one (1) or more trees shall make application to the approving body not less than ten (10) days prior to the time desired to physically remove the tree. Said application shall contain:

- A. A brief statement of the reasons for removal;
- B. Consent of the owner or record of the land on which the proposed activity is to occur;
- C. A tree survey with the accurate location, number, species, size (diameter measured four and one-half (4' 6") feet above the ground, approximate heights, and approximate canopy diameter) and approximate age (if known) of the tree or trees to be removed;
- D. If the project involves other discretionary development, then this survey must be part of the total development plan and must also describe any tree or trees which could be affected by the proposed development; and
- E. Any other pertinent information.

**19.12.090 Decision criteria.**

Prior to the issuance of such permit, the approving body shall ascertain whether or not the tree cannot or should not be retained.

The determination of the approving body in granting or denying a permit shall be based upon the following criteria:

- A. Whether or not the preservation of the tree would unreasonably compromise an owner's development of land;
- B. The condition of the tree with respect to disease, general health, damage, danger of falling, and whether or not the tree acts as a host for an organism which is parasitic to another species of tree which is in danger of being exterminated by the parasite;
- C. The approximate age of the tree compared with the average life span for that species;
- D. Age of tree with regard to whether or not removal of the tree would encourage healthier, more vigorous growth of younger similar trees in the area;
- E. The number of existing trees in the area and the effect of the tree removal upon public health, safety, prosperity, beauty and general welfare of the area;
- F. The number of healthy trees that a given parcel of land will support, with and without the proposed development;
- G. The effect of tree removal on soil stability/erosion, particularly near water courses or on steep slopes;
- H. The potential for the tree to be a public nuisance, or interfere with utility service, as well as its proximity to existing structures;

- I. Present and future shade potential with regard to solar heating and cooling;
- J. Whether or not there are any alternatives that would allow for the preservation of the tree; and
- K. Any other information the body finds pertinent to the decision, including, if necessary, information obtained at a public hearing.

**19.12.100 Tree removal provisions.**

- A. If a permit is denied, the Public Works Director shall provide written notification, including the reasons for denial, to the applicant.
- B. A granted permit shall be valid for a period of six (6) months from the date of issuance. An extension of time may be granted not to exceed six (6) months.
- C. It shall be the responsibility of the person trenching, grading or filling within a tree dripline or cutting, destroying or removing any tree under this chapter to have the tree permit or a copy of the conditions of approval imposed by the approving body at the tree removal site.
- D. The permit, or the conditions of approval granted by the approving body, shall entitle the applicant to remove only the tree or trees approved for removal.

**19.12.110 Consideration of permits.**

It shall be the responsibility of the applicant to demonstrate the need for a permit or other approval issued pursuant to the provisions of this chapter.

In considering any application or permit relating to the provisions of this chapter, the approving body may approve such permit or application standards and requirements of this chapter regulating environmental control or development.

In passing judgment upon permits or applications required pursuant to the provisions of this chapter, the approving body may impose such reasonable conditions of approval as are necessary and appropriate to minimize the environmental, health or safety effects of the development or use.

**19.12.120 Appeal.**

Any decision made by any approving body other than the City Council may be appealed by the applicant property owner to the City Council. Such appeal must be submitted in writing to the City Clerk within fifteen (15) days of the date on which the original decision occurred briefly stating the facts and grounds of appeal, and signed by the appellant. Upon receipt of said appeal, the City Clerk shall set the item on the City Council's

agenda not later than thirty (30) days from the date of filing said appeal, and shall notify the appellant of the hearing date. The City Clerk shall at the time of setting the date of the hearing also mail a copy of the appeal, together with a notice of public hearing to each member of the City Council and the Public Works Director. Following the hearing of any such appeal, the City Council may affirm, reverse or modify the former action. The action of the City Council on any such appeal shall be final and conclusive.

#### **19.12.130 Development control measures.**

The approving body may mandate any or all of the following control measures to mitigate damage to oak trees caused by land development:

A. No grade cuts greater than one (1' 0") foot shall occur within the driplines of oak trees, and no grade cuts whatsoever shall occur within five (5' 0") feet of their trunks;

B. No fill greater than one (1' 0") foot shall be placed within the driplines of oak trees and no fill whatsoever shall be placed within five (5' 0") feet of their trunks;

C. No trenching whatsoever shall be allowed within the driplines of oak trees. If it is absolutely necessary to install underground utilities within the driplines of an oak tree, the trench shall be either bored or drilled;

D. No irrigation system shall be installed within the driplines of oak tree(s) which may be detrimental to the preservation of the oak tree(s) unless specifically authorized by the approving body or the Public Works Director;

E. Landscaping beneath oak trees may include nonplant materials such as boulders, cobbles, wood chips, etc. The only plant species which shall be planted within the driplines of oak trees are those which are tolerant of the natural semi-arid environs of the trees. Limited drip irrigation approximately twice per summer is recommended for the understory plants. Permitted plants include:

1. *Iris douglasiana* hybrids (native iris),
2. *Heuchera* species (coral bells),
3. *Aloe* species,
4. *Dudleya* species,
5. *Sisyrinchium bellum* (blue-eyed grass),
6. *Hemerocallis* hybrids (day lily),
7. *Cyclamen neopolitanum*,



8. *Mimulus aurantiacus* and hybrids (monkey flowers),
9. *Artemisia* species,
10. *Achillea tomentosa* (woolly yarrow),
11. *Symphoricarpos millis* (prostrate snowberry),
12. *Mahonia repens* (creeping Mahonia),
13. *Mahonia nervisa* (long leaf Mahonia),
14. *Mahonia aquifolium compacta* (compact Oregon grape),
15. *Arctostaphylos edmundsii* "Carmel Sur" (Sur manzanita),
16. *Arctostaphylos hookeri* "Monterey Carpet,"
17. *Sollya heterophylla* (Australian bluebell creeper),
18. *Ribes viburnifolium* (Catalina fragrance),
19. *Daphne odora* (winter daphne),
20. *Arctostaphylos hookeri* "Wayside,"
21. *Arctostaphylos densiflora* "Howard McMinn,"
22. *Symphoricarpos rivularis* (snowberry),
23. *Rhamnus californica* "Eve Case" (California coffeeberry),
24. *Heteromoles arbutifolia* (toyon),
25. *Choisya ternata* (Mexican orange or mock orange);

F. Paving within the driplines of oak trees should be stringently minimized. When it is absolutely necessary, porous material should be used.

#### **19.12.140 Replanting security.**

A. Adequate security may be required for any project for which a permit or other approval is required pursuant to provisions of this chapter or the Zoning Code. The purpose of such security shall be to guarantee the applicant's compliance with conditions of approval and City ordinance provisions regarding tree protection and preservation. Security may also be required at the discretion of the approving body to insure the completion of any additional work specified as a condition of permit approval or other approvals.

B. The security shall be in the amount of one hundred (100%) percent of the estimated cost of the required work.

C. The security may be in the form of a letter of credit, cash deposit, or a combination thereof and shall be approved by City Attorney.

D. The security may be required by the approving body whenever it appears that substantial work is required by the City or its agencies on the following:

1. Land containing trees;

2. Substantial grading is required;

3. When action may be required by the City or any of its agencies to correct a violation of the Zoning Code or other written policies or regulations of the City.

E. The terms and conditions of the security shall be determined by the approving body and shall be stated in the conditions of approval.

F. Security posted on actual work required shall be maintained for a period of time not to exceed five (5) years.

G. Any interest gained on case security posted by requirement of the City shall accrue to the applicant or his or her designee.

#### **19.12.150 Other species of trees.**

The approving body shall have the authority to adopt mitigation measures as conditions of approval for discretionary projects in order to protect other species of trees, in addition to the oaks. Violations of such adopted conditions shall be subject to the penalties described in EGMC Sections 19.12.190, 19.12.200, and 19.12.210.

#### **19.12.160 Grading beneath tree driplines.**

Grading beneath trees to be saved shall be given special attention. Every reasonable effort shall be made to avoid creating conditions adverse to the tree's health. The natural ground within the drip-lines of protected trees shall remain as undisturbed as possible. Grading within the driplines of oak trees will not be permitted unless specifically authorized by the approving body or by the Public Works Director.

A. Major roots two (2") inches or greater in diameter encountered within the tree's dripline in the course of excavation from beneath trees which are not to be removed shall not be cut and shall be kept moist and covered with earth as soon as possible. Roots one (1") inch to two (2") inches in diameter which are severed shall be trimmed and treated with pruning compound and covered with earth as soon as possible.

B. Support roots that are inside the dripline of the tree shall be protected. The permittee is required to hand-dig in the vicinity of major trees to prevent root cutting and mangling which may be caused by heavy equipment.

C. Cross sections may be required where trees are located adjacent to roadways, new slopes or critical areas. In addition, a dimension from the face of a tree to some critical point or line may be required.

D. Any condition imposed by a Planning Commission, Planning Director, or the City Council relating to grading in the vicinity of trees, is incorporated into and made a part of the improvement standards. The consulting engineer for the project shall verify in writing on a form to be provided by the Public Works Director that the grading has been completed as required by this section and any conditions imposed by a Planning Commission, Planning Director, or the City Council.

#### **19.12.170 Emergencies.**

In case of emergency caused by the tree being in a hazardous or dangerous condition requiring immediate action for the safety of the structures or human life, such tree may be removed by permission of the Public Works Director during normal working hours or by the Cosumnes Community Services District at other times.

#### **19.12.180 Fees.**

The City Council by resolution shall establish a fee to cover the expenses of the application and appeal process.

#### **19.12.190 Stop work order.**

Whenever the Public Works Director, the Planning Commission or the City Council determines that any permit, or variance or any action being taken thereunder, or any action under it without a permit, is in conflict with this chapter or with the standards established by the City or any department thereof, or ordinance, regulation, or policy, it shall issue a stop work order which shall prohibit any action thereunder. Such stop work order shall set forth the alleged violations and may list remedies to be taken to correct the violations. The person receiving such a stop work order shall report in writing to the officer, person or body issuing the order within forty-eight (48) hours regarding the next steps to be taken to correct the violations. Such stop work order may be extended to provide an opportunity for a hearing being extended to the affected party. During the period of such extension, the Planning Commission shall review the matter as herein provided. A stop work order issued pursuant to this section may be withdrawn by the Public Works Department or the officer who issued it upon a finding that the circumstances giving rise to the order no longer exist.

### **19.12.200 Suspension, revocation and restoration.**

In addition to or instead of the measures set forth in this chapter, the Planning Commission or the City Council may suspend any permit subject to a public post-suspension hearing upon the finding that a violation of conditions of approval has occurred.

Following the public hearing, if the City revokes the permit or finds that a violation of conditions of approval has occurred, it may require conditions of restoration. Said restoration shall include a requirement to replace in-kind any oak tree(s) which have been removed without a permit. Further, the replacement shall consist of specimen trees, no less than a fifteen (15) gallon size, having a total combined diameter equal to the total combined diameter of the illegally removed tree(s). If the project site is not capable of supporting all the required replacement trees, the violator shall pay to the City a sum equivalent to the retail cost of the number of trees that cannot be accommodated. These funds will be deposited in the tree preservation fund maintained by the Finance Department as set forth in EGMC Section 19.12.220.

### **19.12.210 Violation a misdemeanor and nuisance.**

A violation of this chapter is a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

### **19.12.220 Tree preservation fund.**

A tree preservation fund is established for the City of Elk Grove for the purposes specified in EGMC Section 19.12.200. The monies received in lieu of replacement of illegally removed trees shall be forwarded to the Finance Director for deposit in the tree preservation fund. Except as provided in this section, under no circumstances shall the funds collected by the Finance Director for the tree preservation fund be directed to any other fund to be used for any other purposes other than for tree planting and preservation programs and public education programs regarding trees. tree preservation fund monies may be directed by the City Council to nonprofit organizations for the implementation of programs consistent with the purposes of the tree preservation fund.

### **19.12.230 Cumulative penalties.**

The remedies provided for herein shall be cumulative and not exclusive.

## **TITLE 20**

### **ENVIRONMENTAL PROTECTION**

#### **Chapters:**

##### **20.01 Environmental Impact Reports**

##### **20.02 Mitigation Monitoring and Reporting Program**

#### **Chapter 20.01**

### **ENVIRONMENTAL IMPACT REPORTS**

#### **Sections:**

20.01.001 Purpose.

20.01.010 Application of chapter.

20.01.020 Procedures.

20.01.040 Precedence and liberal construction.

20.01.050 Environmental documents – Extension of time.

#### **20.01.001 Purpose.**

It is the purpose of this chapter to establish procedures and guidelines for the City to implement the requirements of the California Environmental Quality Act of 1970, as amended and interpreted, and the Guidelines for Implementation of the California Environmental Quality Act of 1970 adopted by the Secretary for Resources of the state.

#### **20.01.010 Application of chapter.**

This chapter shall apply to each department, agency, commission, board or office of the City which is responsible for the initiation, processing, review or approval of environmental impact reports as the same is defined in the California Environmental Quality Act of 1970.

#### **20.01.020 Procedures.**

The City Council shall, by resolution, adopt the procedures necessary to carry out the purpose of this chapter. The procedures shall be consistent with the guidelines

established by the Secretary for Resources, and shall provide for, but not necessarily be limited to, the following:

- A. The preparation, review and approval of environmental impact reports for City-initiated projects;
- B. The review and comment on environmental impact reports or statements from other governmental agencies;
- C. The preparation, review and approval of environmental impact reports for private development on privately owned land for which a permit, lease, license, funding or other entitlement of use is required from the City;
- D. The reasonable opportunity for anyone interested in any project to review and comment upon environmental impact reports prepared by the City;
- E. Exemptions of various projects from the requirement of preparation of environmental impact reports;
- F. The preparation, notice of and filing of negative declarations.

**20.01.040 Precedence and liberal construction.**

The provisions of this chapter and the provisions of any resolution implementing this chapter shall be construed so that in the event there is conflict or ambiguity between the provisions of this chapter and the provisions of any code or ordinance or regulations of the City, the provisions of this chapter and the provisions of any implementing resolution shall govern.

**20.01.050 Environmental documents – Extension of time.**

Any hearing body authorized to take any action on environmental documents pursuant to procedures adopted under authority of EGMC Section 20.01.020 may extend any period of time prescribed by the procedures for processing such environmental documents provided that compelling circumstances justify additional processing time and the project applicant consents in writing to the extension in time.

**Chapter 20.02**

**MITIGATION MONITORING AND REPORTING PROGRAM**

Sections:

20.02.010 Purpose.

20.02.020 Definitions.

20.02.030 Environmental Planning Manager responsibilities.

20.02.040 Mitigation monitoring and reporting program compliance requirement.

20.02.050 Processing of mitigation monitoring and reporting programs.

20.02.060 Program completion certificate.

20.02.070 Fees.

20.02.080 Criminal penalties.

20.02.090 Civil and administrative remedies.

20.02.100 Appeals.

**20.02.010 Purpose.**

The California Environmental Quality Act (commonly known as CEQA and found at Section 2100 et seq. of the Public Resources Code) was enacted in 1970 with the finding that the maintenance of a quality environment is a matter of statewide concern. The Legislature, in adopting CEQA, declared, as a matter of policy, that public agencies are not to approve projects as proposed if the significant environmental effects of such projects can be substantially reduced through feasible alternatives or feasible mitigation measures.

CEQA procedures were established by the Legislature to assist public agencies in the systematic identification of the significant environmental effects of proposed projects. These effects are identified in two types of environmental documents: Environmental Impact Reports and Negative Declarations. Environmental Impact Reports (“EIRs”) containing findings of significant impacts are required to identify mitigation measures needed to reduce impacts to a less than significant level. Negative Declarations can also identify mitigation measures that reduce impacts to a less than significant level.

In 1988, the Legislature added to CEQA a requirement that a public agency, in approving feasible mitigation measures contained in EIRs and Negative Declarations, must also adopt a mitigation monitoring and reporting program. Such a program is to be designed to ensure compliance with the changes to a project and the conditions of approval of a project which were required by the public agency in order to reduce or avoid significant environmental effects.

The purpose of this chapter is to set forth the procedures and requirements to be followed in this City with regard to the preparation and adoption of, and compliance with, mitigation monitoring and reporting programs for proposed projects when those programs are necessary to meet the requirements of CEQA.

In adopting the ordinance codified in this chapter, the City Council is mindful of the Legislature's intent in enacting CEQA. Protection of the public health, safety, and welfare was a fundamental reason for the passage of CEQA.

This chapter is in furtherance of the legislative intent of CEQA. In that regard, it is necessary to the protection of the public health, safety, and welfare that civil enforcement measures be utilized in addition to criminal penalties when this chapter is violated. In particular, when there is noncompliance with an adopted mitigation monitoring and reporting program and when that noncompliance presents a serious and immediate threat to the public health, safety and welfare, a stop work order is the best possible means of minimizing this threat. Other civil and administrative remedies such as injunctive relief, revocation of permit, or abatement of a nuisance will serve to protect the environment, and the health, safety, and welfare of the people of this City when a stop work order is either not required, not observed, or not sufficient by itself.

#### **20.02.020 Definitions.**

For this chapter, the following definitions shall apply:

A. "Applicant" means the person listed as the applicant on an application for a project and includes the record owner of the real property that is the subject of the project at the time of the application for the project. "Applicant" also includes successive record owners or other persons who obtain an interest in the subject real property, or a portion thereof, after submission of the application for the project but prior to the issuance of a program completion certificate certifying completion of all requirements of a program.

B. "Approving body" means the Elk Grove City Council, the Planning Commission, the Planning Director, or any other City of Elk Grove entity having discretionary authority under the Elk Grove Municipal Code or state law to approve a project.

C. "Mitigation monitoring and reporting program" or "program" means a program adopted by the approving body pursuant to Section 21081.6 of the Public Resources Code and this chapter to ensure compliance with adopted or required changes to mitigate or avoid significant environmental effects.

D. "Environmental Planning Manager" means the Environmental Planning Manager of the City of Elk Grove Planning Department or his or her designee.



E. "Project" means a project as defined in the California Environmental Quality Act ("CEQA") found at Section 21000 et seq. of the Public Resources Code.

F. "Program completion certificate" means a certificate issued by the Environmental Planning Manager to certify completion of all or a designated phase of an adopted mitigation monitoring and reporting program.

#### **20.02.030 Environmental Planning Manager responsibilities.**

The Environmental Planning Manager shall prepare and ensure compliance with adopted mitigation monitoring and reporting programs. The Environmental Planning Manager is authorized to promulgate and enforce regulations consistent with the purposes, intent, and express terms of this chapter as she or he deems necessary to implement such purposes, intent, and express terms. No regulation promulgated by the Environmental Planning Manager or amendments thereto, shall be enforced or become effective until thirty (30) days following the date on which the proposed regulations are filed with the City Clerk.

#### **20.02.040 Mitigation monitoring and reporting program compliance requirement.**

For each project for which a mitigation monitoring and reporting program is required by this chapter and adopted by the approving body, full compliance with the adopted program for the project shall be a condition of approval of the project, and the applicant shall obtain a program completion certificate within the time requirements set forth in the adopted program. No project or phase of a project shall be considered to be in compliance with its adopted program until the required program completion certificate(s) have been issued for that project or phase of a project.

#### **20.02.050 Processing of mitigation monitoring and reporting programs.**

A. Preparation. The Environmental Planning Manager shall prepare or cause to be prepared a proposed mitigation monitoring and reporting program for any project for which mitigation measures listed in an approved environmental document were adopted by the approving body.

1. The proposed program shall contain the following elements:

- a. A statement that the requirements of the adopted program run with the real property that is the subject of the project and that successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- b. A statement that prior to any lease, sale, transfer, or conveyance of any portion of the real property that is the subject of the project, the applicant shall provide a copy

of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

- c. A statement which specifies the responsibilities of the applicant and the Environmental Planning Manager as well as whether professional expertise is required for completion or evaluation of any part of the program.
- d. The time requirements, schedule, phases or tasks that will, upon completion, result in issuance of a program completion certificate from the Environmental Planning Manager.
- e. A statement of the civil remedies and criminal penalties permitted by this chapter for noncompliance with an adopted mitigation monitoring and reporting program.

2. Where a project is approved with mitigation measures that have been modified during the hearing process from those originally recommended in the environmental document, the proposed mitigation monitoring and reporting program shall be modified to maintain consistency with the project as approved. The proposed program may also be modified at the discretion of the approving body.

B. Adoption. When making findings required by Section 21081 of the Public Resources Code or adopting a negative declaration containing mitigation measures, the approving body shall adopt a mitigation monitoring and reporting program as proposed or modified pursuant to this chapter.

1. Notwithstanding any other City ordinance or regulation to the contrary, approval of the project shall not be final until the adoption of a mitigation monitoring and reporting program if one is required under CEQA and this chapter.

2. Upon adoption, the applicant and the chairperson of the approving body shall execute the adopted program as legally necessary for the adopted program to be recorded with the Sacramento County Clerk-Recorder. After the execution of the adopted program, the City Clerk shall forward the adopted program to the Sacramento County Clerk-Recorder for recordation. After recordation, the adopted program shall be returned to the Environmental Planning Manager for safekeeping until at least a program completion certificate has been issued and recorded certifying completion with all of the requirements of the adopted program.

3. In conjunction with the adoption of a mitigation monitoring and reporting program for a project, the approving body may require that a bond or similar security be posted by the applicant to assure performance of any construction, alteration, repair, or other work required by the program. The bond or similar security shall be in a form approved by the City Attorney in an amount established by the approving body and shall be deposited

with the City Clerk prior to commencement of any work on the real property that is the subject of the project.

C. Compliance. Whenever a mitigation monitoring and reporting program is adopted for a project, the applicant for that project shall comply with the adopted program. In general, compliance shall include the following:

1. The applicant shall provide written notice to the Environmental Planning Manager of the progress toward compliance with the mitigation measures in accordance with the schedule set forth in the adopted program.

2. Unless a different time period is specified in the adopted program, within ten (10) business days of the receipt of a notice of progress the Environmental Planning Manager shall verify that the project is in compliance with the adopted program. Any noncompliance shall be documented and reported in writing to the applicant within ten (10) business days of the discovery.

3. The applicant shall, within ten (10) business days of receipt of a notice of noncompliance, correct any noncompliance and provide written notice to the Environmental Planning Manager of the correction. The ten (10) day limit may be extended an additional five (5) business days by the Environmental Planning Manager upon a showing of good cause.

#### **20.02.060 Program completion certificate.**

A. Upon the determination of the Environmental Planning Manager that compliance with the terms of the mitigation monitoring and reporting program adopted by the approving body for a project or phase thereof has been achieved, and that there has been full payment of all fees for the project, the Environmental Planning Manager shall issue and the City Clerk shall cause the recordation of a program completion certificate for that project or phase.

B. More than one (1) program completion certificate may be required or issued for a project whenever there are multiple phases to a project which need to be implemented over different periods of time.

#### **20.02.070 Fees.**

A. The fee for a mitigation monitoring and reporting program shall be the amount determined by the Environmental Planning Manager to be the actual direct and indirect costs incurred by the City of Elk Grove for that mitigation monitoring and reporting program.

B. Until compliance with a specific mitigation monitoring and reporting program is finally achieved and a program completion certificate issued, fees shall be estimated by the Environmental Planning Manager.

1. Initially an estimated fee for a proposed program shall be established by the Environmental Planning Manager. After adoption of a program by the approving body, adjustments to the initial estimate shall be made by the Environmental Planning Manager as necessary to accurately reflect the direct and indirect costs incurred by the City of Elk Grove for that program.

2. Approval of a project for which a program is required pursuant to this chapter shall be conditioned on payment of the initial estimated fee and all other fees required by this chapter. Adjustments to the initial fee shall be paid by the applicant not later than thirty (30) business days after receipt of written notice of any adjustments to the initial fee.

3. If, after compliance with the adopted program but prior to issuance of a program completion certificate, the Environmental Planning Manager determines that the estimated fee paid exceeds the actual direct and indirect costs incurred by the City of Elk Grove for that program, then the difference shall be refunded to the applicant. If, after compliance with the adopted program but prior to issuance of a program completion certificate, the Environmental Planning Manager determines that the estimated fee paid is less than these costs, the applicant shall remit the difference to the City of Elk Grove within thirty (30) business days of his or her receipt of notice that the estimated fee is insufficient to reimburse the City of Elk Grove for its costs.

C. For public agency projects, the Environmental Planning Manager, when so authorized by the City Council on a case-by-case basis, may enter into a written agreement to allow the payment of a mitigation monitoring and reporting program fee to be paid in installments provided:

1. The applicant is a public agency;

2. The project is to serve a public purpose;

3. The public agency is without sufficient funds to pay the fee in one lump sum; and

4. The payment period does not exceed one (1) year.

#### **20.02.090 Civil and administrative remedies.**

In addition to the penalties set forth in EGMC Section 20.02.080, the City may carry out or seek such other remedies as permitted by law, including, but not limited to, the following:

A. Injunctive relief.

**B. A stop work order subject to the following:**

1. Whenever the Environmental Planning Manager finds that there is noncompliance with an adopted program and that this noncompliance presents a serious and immediate threat to the public health, safety and welfare, the Environmental Planning Manager shall issue a stop work order which shall prohibit further work on the project that is the subject of the adopted program.

2. In the event the Environmental Planning Manager issues a stop work order, notice of this order shall be delivered to the address of the project and to the address of the applicant, if different. The notice shall contain the following:

a. The findings justifying the stop work order;

b. The time and date when the stop work order commences;

c. The time, date, and place at which the applicant may appear to respond to the findings in the notice, which shall not be later than twenty-four (24) hours following the time and date when the stop work order commences.

3. Authority to recommence work on the project that is the subject of an adopted program after issuance of a stop work order may be granted by the Environmental Planning Manager upon the establishment of such terms, conditions and requirements as are reasonably necessary to protect the public health, safety, and welfare and as are consistent with the terms, conditions, and requirements of the adopted program.

**C. Revocation of any special permit granted concurrently with the approval of a program subject to the following:**

1. The Planning Commission on its own motion may, and if directed by the City Council shall, hold a public hearing for revoking any special permit such as a variance, exception, lot reduction permit, special development permit, mobile home certificate of compatibility, certificate of nonconforming use, or conditional use permit which has been granted pursuant to the provisions of the Zoning Code concurrently with the approval of a program. Notice shall be given in accordance with the Zoning Code.

2. The hearing shall be held in accordance with the following:

a. All testimony at the hearing shall be under oath or affirmation. The Secretary of the Planning Commission or designee shall administer oaths and retain relevant records and all exhibits and documents presented at said hearing;

b. A party shall be afforded the opportunity to present evidence and testimony on all relevant issues. The Chairperson may impose reasonable limitations on the number

of witnesses heard, and on the nature and length of the testimony. The Chairperson may call witnesses and introduce papers on his or her own volition;

- c. The Planning Commission shall make a full record of the hearing, which may be transcribed on order of the Chairperson;
- d. Decisions of the Planning Commission shall be based upon evidence presented during the public hearing. The Planning Commission shall not rely upon any communications, reports, staff memoranda, or other materials prepared in connection with the particular case unless made a part of the record.

3. The Planning Commission may revoke the special permit if it finds that any of the following grounds exist:

- a. Noncompliance by the permittee with any of the terms, conditions, or requirements of this chapter;
- b. Noncompliance by the permittee with the terms, conditions, or requirements of any regulation promulgated by the Environmental Planning Manager pursuant to this chapter;
- c. Noncompliance with any of the terms, conditions, or requirements of the mitigation monitoring and reporting program approved in conjunction with the grant of the permittee's special permit;
- d. Noncompliance with any stop work order issued by the Environmental Planning Manager with regard to the permittee's project.

D. Abatement of a nuisance in accordance with the following:

1. Any project which is not in compliance with the provisions of this chapter; any regulations adopted by the Environmental Planning Manager pursuant to this chapter; or any term, condition, or requirement of a program approved for that project shall be and the same is hereby declared to be unlawful and a public nuisance. A hearing to abate such a public nuisance may be ordered by resolution of the City Council upon a showing by the Environmental Planning Manager that there is noncompliance with either a provision of this chapter, a regulation adopted by the Environmental Planning Manager pursuant to this chapter, or any term, condition, or requirement of a program approved for the project.

2. Written notice of the hearing to abate the public nuisance shall be given to the applicant of the project and anyone known to the City Council to be in possession of the real property that is the subject of the project. The notice shall be personally served or mailed by certified mail at least ten (10) days prior to the date of the hearing. In

instances when the Environmental Planning Manager cannot ascertain the address of the applicant or the person in possession of the subject real property, written notice of the hearing to abate the public nuisance shall be posted upon the subject property not later than seven (7) days prior to the date of the hearing and published in a newspaper of general circulation published within the City of Elk Grove. Those receiving notice and any other interested person shall be provided an opportunity to be heard at the hearing.

3. The hearing to abate the public nuisance shall be held before the City Council and at the conclusion of the hearing, the City Council shall determine whether there is noncompliance with a provision of this chapter or a regulation adopted by the Environmental Planning Manager pursuant to this chapter, or any term, condition, or requirement of the approved program. If there is such noncompliance, the City Council may take such action as it deems appropriate to abate the public nuisance including, but not limited to, ordering the appropriate City officials to undertake the steps necessary to abate the public nuisance.

4. Upon demand by the City, the cost of the abatement shall be paid by the applicant or the person in possession of the subject real property. If the cost of the abatement is not paid upon demand by the City, a hearing shall be held to consider whether to order the cost of the abatement specially assessed against the real property that is the subject of the project. Written notice of the hearing to consider whether to order the cost of the abatement specially assessed against the subject real property shall be given to the applicant of the project and anyone known to the City Council to be in possession of the subject real property. The notice shall be personally served or mailed by certified mail at least ten (10) days prior to the date of the hearing. In instances when the Environmental Planning Manager cannot ascertain the address of the applicant or the person in possession of the subject real property, written notice of the hearing to consider whether to order the cost of the abatement specially assessed against the subject real property shall be posted upon the subject real property not later than seven (7) days prior to the date of the hearing. In addition to posting, notice of the hearing shall be published once not later than five (5) days prior to the date of the hearing in a newspaper of general circulation published within the City of Elk Grove. Those receiving notice and any other interested person shall be provided an opportunity to be heard at the hearing.

5. The hearing to consider whether to order the cost of the abatement specially assessed against the subject real property shall be held before the City Council. At the conclusion of the hearing, the City Council shall determine the cost of abatement and whether to order that cost specially assessed against the subject real property. If the cost of abatement is ordered to be specially assessed against the subject real property, then the assessment may be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary City taxes.

All laws applicable to the levy, collection, and enforcement of City taxes are applicable to the special assessment.

6. If the City Council orders the cost of the abatement to be specially assessed against the subject real property, the City Council also may cause a notice of abatement lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered by the City Council and the date the abatement was complete, and include a legal description of the real property subject to the lien and the amount of the abatement cost.

7. Nothing in this section prohibits the summary abatement of a nuisance upon order of the City Council or upon order of any other City officer authorized by law to summarily abate nuisances if the City Council or officer determines that the nuisance constitutes an immediate threat to public health or safety.

#### **20.02.100 Appeals.**

A. Upon payment of the appeal fee established by resolution of the City Council and the filing of an appeal, an applicant may appeal the imposition of fees established pursuant to EGMC Section 20.02.070, a determination by the Environmental Planning Manager denying issuance of a program completion certificate pursuant to EGMC Section 20.02.060, a stop work order issued by the Environmental Planning Manager pursuant to this chapter, or a revocation by the Planning Commission pursuant to this chapter.

B. The appeal fee and appeal shall be filed with the City Clerk within ten (10) business days of the date of the notice of the imposed fees, the determination of the Environmental Planning Manager denying issuance of a program completion certificate, the date of issuance of a stop work order, or the date of a revocation undertaken pursuant to this chapter. The appeal shall be in writing to the City Council and shall include a statement of the reasons for the appeal.

C. Upon receipt of the appeal fee and the appeal, a hearing shall be scheduled before the City Council. The City Council shall be authorized to deny the introduction of evidence not previously considered by the Environmental Planning Manager and decide the matter after oral argument presented during the hearing, or to admit evidence not previously considered by the Environmental Planning Manager, or conduct a *de novo* hearing. The decision by the City Council granting or denying the appeal shall be final and shall be accompanied by findings of fact and conclusions.

1. In deciding an appeal of a fee imposed pursuant to EGMC Section 20.02.070, the City Council shall be authorized to establish a different fee as the amount of actual direct and indirect costs incurred by the City of Elk Grove for a particular program.



2. In deciding an appeal from the determination of the Environmental Planning Manager denying issuance of a program completion certificate pursuant to EGMC Section 20.02.060, the City Council shall issue a program completion certificate if it determines that compliance with all of the terms of the adopted program has been achieved, or shall deny issuance of a program completion certificate if it determines that compliance with all of the terms of the adopted program has not been achieved.

3. In deciding an appeal from the issuance of a stop work order, the City Council shall affirm the stop work order if it finds that there has been noncompliance with the adopted program and that this noncompliance presents a serious and immediate threat to the public health, safety, and welfare. If the City Council finds that there has been compliance with the terms of the adopted program or that any noncompliance does not present a serious and immediate threat to the public health, safety, and welfare, then the City Council shall discharge the stop work order.

4. In deciding an appeal from a revocation undertaken pursuant to this chapter, the City Council shall affirm the stop work order if it finds any of the grounds set forth in EGMC Section 20.02.090(C)(3) exist. If the City Council finds that none of the grounds set forth in EGMC Section 20.02.090(C)(3) exist, then it shall reinstate the special permit as if the revocation had not occurred.

## **TITLE 21**

### **PLANS**

#### **Chapters:**

#### **21.05 General Provisions**

#### **21.10 Definitions**

#### **21.15 Capital Improvement Program**

#### **Chapter 21.05**

### **GENERAL PROVISIONS**

#### **Sections:**

#### **21.05.010 Purpose.**

### **21.05.010 Purpose.**

The purpose of this title is to provide for the adoption and amendment of general plans, community plans, and specific plans, and to establish procedures for the preparation and review of a capital procedure program providing for the physical development of the City of Elk Grove.

## **Chapter 21.10**

### **DEFINITIONS**

Sections:

21.10.007 Capital improvement program.

21.10.025 General Plan.

21.10.030 Planning area.

21.10.035 Planning Commission.

21.10.040 Secretary.

21.10.045 Specific plan.

#### **21.10.007 Capital improvement program.**

“Capital improvement program” means that plan of physical improvements periodically proposed by the City Manager and approved by the City Council.

#### **21.10.025 General Plan.**

“General Plan” means the General Plan of the City of Elk Grove, or any element or part thereof, adopted pursuant to the provisions of the State Planning and Zoning Law, Title 7 of the Government Code.

#### **21.10.030 Planning area.**

“Planning area” means an area established by the City Council through the General Plan.

#### **21.10.035 Planning Commission.**

“Planning Commission” means the Planning Commission of the City of Elk Grove.

#### **21.10.040 Secretary.**

“Secretary” means the Secretary of the Planning Commission.

#### **21.10.045 Specific plan.**

“Specific plan” means a specific plan, or any element or part thereof, adopted by the City Council pursuant to the provisions of the State Planning and Zoning Law, Title 7 of the Government Code.

### **Chapter 21.15**

#### **CAPITAL IMPROVEMENT PROGRAM**

Sections:

21.15.010 Definitions.

21.15.020 Format.

21.15.030 Submittal.

21.15.040 Preparation.

21.15.050 Review by Planning Commission.

21.15.060 Adoption by the City Council.

#### **21.15.010 Definitions.**

As used in this chapter:

A. “Applicable agencies” means each department, agency, commission, board, office or dependent district of the City whose budget includes funding for physical improvements.

B. “Physical improvements” means any new construction proposed by an applicable agency costing in excess of One Hundred Thousand and no/100<sup>ths</sup> (\$100,000.00) Dollars, exclusive of the following:

1. Projects exempted from the provisions of the California Environmental Quality Act and as provided in the state or City guidelines adopted under the provisions of said Act;

2. Projects which the City Council or the Public Works Director determine, in cases of emergency, are necessary for the continued conduct of City operations or services, or to avoid danger to life or property;

3. Improvements constructed pursuant to the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913, or other similar assessment district acts.

**21.15.020 Format.**

The City Manager shall develop and determine the format of the capital improvement program, and shall issue such written instructions and forms as are deemed necessary to elicit from the applicable agencies sufficient information to prepare his recommendations to the City Council for a capital improvement program.

**21.15.030 Submittal.**

The City Manager shall transmit to all applicable agencies materials necessary for preparation of their requests to construct physical improvements during the next capital improvement program period; and on such date as the City Manager specifies all applicable agencies shall file completed proposals for physical improvements with the City Manager.

**21.15.040 Preparation.**

The City Manager shall review the proposals submitted by the applicable agencies, compile his recommendations into a single capital improvement program document, which shall be transmitted to the City Council. The City Council shall refer the proposed capital improvement program to the Planning Commission for review as defined in EGMC Section 21.15.050.

**21.15.050 Review by Planning Commission.**

The Planning Commission shall review the proposed capital improvement program as to consistency with the adopted City General Plan and report with its recommendation as to consistency to the City Council. Such review by the Planning Commission may include consideration of pertinent technical information, but the Planning Commission shall not be required to hold a public hearing thereon. Failure of the Planning Commission to report its recommendation to the City Council within forty (40) days from receipt thereof shall be deemed a recommendation that the proposed projects in the capital improvement program are consistent with the adopted General Plan.

**21.15.060 Adoption by the City Council.**

The City Council, as the Planning Agency, shall review the capital improvement program, consider the recommendations of the Planning Commission and staff, and

determine the consistency of the proposed projects in the capital improvement plan with the General Plan prior to the appropriation of funds for any proposal contained in said program. Notwithstanding any other provisions of this chapter, the City Council reserves to itself total authority to establish priorities for the scheduling of the physical improvements within the capital improvement program and to determine the appropriateness of funding for such physical improvements.

## **TITLE 22**

### **LAND DEVELOPMENT**

#### **Chapters:**

**22.05 General Provisions**

**22.10 Definitions and References**

**22.15 Contiguous Land and Merger**

**22.20 Procedures**

**22.24 Water and Sewer Requirements**

**22.25 Vesting Maps**

**22.30 Dedications**

**22.40 Park and Recreation Dedication and Fees**

**22.50 Reservations and Public Access to Public Resources**

**22.60 Major Improvement Assessments**

**22.70 Supplemental Improvements Reimbursement Agreements**

**22.80 Improvement Security**

**22.90 Soil Reports**

**22.100 Reversion and Exclusions**

**22.110 Design and Improvement Standards**

**22.120 Violations**

**22.130 Certificate of Compliance**

**22.140 Notice of Merger**

**22.150 Subdivision Information**

**22.300 Street Dedication Map**

**22.400 Plats of Survey**

**Chapter 22.05**

**GENERAL PROVISIONS**

Sections:

22.05.005 Citation and authority.

22.05.010 Continuity of provisions.

22.05.015 Reference.

22.05.020 Delegation.

22.05.030 Application to government agencies.

22.05.035 Limitations.

22.05.040 Findings.

**22.05.005 Citation and authority.**

This title is adopted to supplement and implement the Subdivision Map Act (Division 2, Title 7 of the Government Code).

**22.05.010 Continuity of provisions.**

The provisions of this title, insofar as they are substantially the same as previously adopted ordinances or code provisions relating to the subject matter, shall be construed as restatements and continuations thereof and not new enactments. Any actions or proceedings commenced, or permit or approval issued pursuant to any previously existing ordinance or code provision shall not be affected by the enactment of this title; but all further actions, proceedings and permits or other entitlements shall hereafter conform to this title.

### **22.05.015 Reference.**

Whenever reference is made to any portion of this title, the reference applies to this title as adopted and any amendments or additions hereafter made.

### **22.05.020 Delegation.**

Whenever a power is granted to, or a duty imposed upon, a public officer by this title, the power may be exercised or the duty may be performed by a deputy or other person designated by the officer, unless expressly provided otherwise by this title.

### **22.05.030 Application to government agencies.**

The provisions of this title shall apply to all government agencies, their officers, employees, or agents, to the extent authorized by law.

### **22.05.035 Limitations.**

This title shall be inapplicable to:

- A. The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks or trailer parks.
- B. Mineral, oil or gas leases.
- C. Land dedicated for cemetery purposes under the Health and Safety Code of the state of California.
- D. A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, providing the lot line adjustment is approved by the Planning Director acting as an advisory agency or by the Development Review Committee. Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.
- F. Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.
- G. The financing or leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel unless the project is not subject to review under other local agency ordinances regulating design and improvement.
- H. The financing or leasing of existing separate commercial or industrial buildings on a single parcel.

I. Subdivisions of four (4) parcels or less for construction of removable commercial buildings having a floor area of less than one hundred (100 ft<sup>2</sup>) square feet.

**22.05.040 Findings.**

Any finding required to be made by an advisory agency or the City Council pursuant to the Subdivision Map Act or this title shall be in writing in a form to be approved by the City Attorney.

**Chapter 22.10**

**DEFINITIONS AND REFERENCES**

Sections:

22.10.005 Incorporation.

22.10.010 Code references.

22.10.015 Generally.

22.10.020 Access, approved.

22.10.025 Access rights.

22.10.030 Advisory agency.

22.10.035 Appeal board.

22.10.045 Certificate of compliance.

22.10.055 Dedication.

22.10.060 Design.

22.10.065 Director.

22.10.070 General Plan.

22.10.075 Improvement.

22.10.080 Lot.

22.10.085 Map, final subdivision.

22.10.095 Map, street dedication.



22.10.100 Map, tentative parcel.

22.10.105 Map, tentative subdivision.

22.10.110 Notice of violation.

22.10.115 Public water supply.

22.10.120 Right-of-way.

22.10.123 Specific Plan

22.10.125 Street, public.

23.10.130 Subdivision.

22.10.135 Subdivision Map Act.

22.10.140 Title.

22.10.141 Designated tributary.

22.10.142 Vesting tentative map.

22.10.145 Zoning Code.

### **22.10.005 Incorporation.**

Whenever any words or phrases as used in this title are not defined herein, but are defined in the Subdivision Map Act as last amended, such definitions are incorporated herein and shall be deemed to apply as though fully set forth in this title. If any inconsistency between a definition set forth in this title and the Subdivision Map Act occurs, the definition in the Subdivision Map Act shall prevail.

### **22.10.010 Code references.**

Any reference to a section bearing numbers from 66410 through 66499.37 shall be to the Government Code relating to subdivisions.

### **22.10.015 Generally.**

The word "includes" shall not limit a term to the specific examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

**22.10.020 Access, approved.**

“Approved access” means right of vehicular travel to a public street, as shown on the final subdivision map or final parcel map and as approved by the Public Works Director.

**22.10.025 Access rights.**

“Access rights” means the rights to vehicular and pedestrian entry onto a public street from private property.

**22.10.030 Advisory agency.**

“Advisory agency” means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority under this title to approve, conditionally approve or disapprove maps.

**22.10.035 Appeal board.**

“Appeal board” means a designated board or other official body charged with the duty of hearing and making determinations upon appeals with respect to divisions of real property, the imposition of requirements or conditions thereon, or the kinds, nature and extent of the design or improvements, or both, recommended or decided by the advisory agency to be required.

**22.10.045 Certificate of compliance.**

“Certificate of compliance” means a certificate recorded by the City which determines that the subdivision or real property complies with the provisions of the Subdivision Map Act and City of Elk Grove ordinances enacted pursuant thereto. A recorded final map or parcel map shall constitute a certificate of compliance with respect to the parcels of real property described therein.

**22.10.055 Dedication.**

“Dedication” means the act of granting to a public agency the right to use a portion of real property for public purposes by the fee owner of the real property.

**22.10.060 Design.**

“Design” means:

A. Street alignments, grades and width;

B. Drainage and sanitary facilities and utilities, including alignments and grades thereof;

- C. Location and size of all required easements and rights-of-way;
- D. Fire roads and firebreaks;
- E. Lot size and configuration;
- F. Traffic access;
- G. Grading;
- H. Land to be dedicated for park or recreational purposes; and
- I. Such other specific requirements in the plan and configuration of the entire subdivision as may be necessary or convenient to ensure conformity to or implementation of the General Plan or an adopted specific plan of the City.

**22.10.065 Director.**

“Director” means the Public Works Director of the Public Works Department of the City of Elk Grove.

**22.10.070 General Plan.**

“General Plan” means the General Plan of the City of Elk Grove or any element, section or portion thereof.

**22.10.075 Improvement.**

A. “Improvement” refers to such street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval of acceptance of the final map thereof.

B. “Improvement” also refers to such other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approved by the local agency or by a combination thereof, is necessary or convenient to ensure conformity to or implementation of the General Plan, or an adopted specific plan, of the City.

**22.10.080 Lot.**

“Lot” means a parcel of land.

**22.10.085 Map, final subdivision.**

“Final subdivision map” means a map prepared by a registered civil engineer or a licensed land surveyor and presented for recording, which conforms to an approved application for a tentative subdivision map and the Subdivision Map Act.

**22.10.095 Map, street dedication.**

“Street dedication map” means a map submitted for authorization to locate and construct streets in conformance with the General Plan and the improvement standards of the City of Elk Grove, including an approved improvement plan.

**22.10.100 Map, tentative parcel.**

“Tentative parcel map” means a map presented to the advisory agency for approval of land divisions which require a parcel map.

**22.10.105 Map, tentative subdivision.**

“Tentative subdivision map” means a map presented to the advisory agency for approval of land divisions which require a final subdivision map.

**22.10.110 Notice of violation.**

“Notice of violation” means a certificate recorded by the City which determines that real property has been divided or has resulted from a division in violation of this title or the Subdivision Map Act.

**22.10.113 Planning Commission**

“Planning Commission” means the Planning Commission of the City of Elk Grove.

**22.10.115 Public water supply.**

“Public water supply” means a water supply provided by a local agency, publicly owned corporation, or approved utility company.

**22.10.120 Right-of-way.**

“Right-of-way” means that portion of real property granted to the City to utilize said property for public street purposes. This grant includes the right for use by public utilities.

**22.10.123 Specific Plan**

“Specific plan” means a specific plan, or any element or part thereof, adopted by the City Council pursuant to the provisions of the State Planning and Zoning Law, Title 7 of the Government Code

### **22.10.125 Street, public.**

A street, highway, thoroughfare, road, avenue, boulevard, alley, lane, court, circle, drive, or way shall not be a public street until and unless the said street shall have been accepted into a street or road system maintained by a city, county, or the state. Streets and roads in public parks, public airports, public schools and similar public grounds shall not be construed to be public streets for the purpose of this title.

### **23.10.130 Subdivision.**

“Subdivision” means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized City assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future, except for leases of agricultural land for agricultural purposes. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in Section 1350 of the Civil Code, a community apartment project, as defined in Section 11004 of the Business and Professions Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code. Any conveyance of land to a governmental agency, public entity, public utility, or subsidiary of a public utility for conveyance to such public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels.

As used in this section, “agricultural purposes” means the cultivation of food or fiber or the grazing or pasturing of livestock.

### **22.10.135 Subdivision Map Act.**

“Subdivision Map Act” means the Subdivision Map Act of the state and all amendments or additions thereto (Title 7, Division 2, Subdivisions, commencing with Section 66410 of the Government Code).

### **22.10.140 Title.**

“Title” means EGMC Title 22.

### **22.10.141 Designated tributary.**

“Designated tributary” means a stream which has a defined bed and channel which serves to give direction to continuously or periodically flowing water into a larger stream or lake.

### **22.10.142 Vesting tentative map.**

“Vesting tentative map” or “vesting map,” or “vesting tentative subdivision map” are synonymous and mean a form of tentative map which, when approved, confers a vested right to proceed, for a limited period of time, with development in substantial compliance with the ordinances, policies, and standards that were in effect at the time the application for a vesting map was determined to be complete, or at the time the application was approved (if EGMC Section 22.25.020(C) is operative).

### **22.10.145 Zoning Code.**

“Zoning Code” means Title 23 of the Elk Grove Municipal Code.

## **Chapter 22.15**

### **CONTIGUOUS LAND AND MERGER**

Sections:

22.15.010 Consideration of contiguous land.

22.15.020 Extent of included land.

22.15.025 Indication of contiguous property.

22.15.030 Indication of undivided and merged property.

22.15.040 Merger.

22.15.045 Unmerged lots.

22.15.050 Lawful parcels.

#### **22.15.010 Consideration of contiguous land.**

Each body acting on or considering any item brought before it by an applicant shall consider all land contiguous to that described on the application, whether improved or unimproved, which is owned actually or constructively, legally or equitably by the applicant or by any person having any such interest in the property described in the application.

**22.15.020 Extent of included land.**

The body considering the item shall recommend or determine, as appropriate, the extent of the land which must be included in or described on the approval sought.

**22.15.025 Indication of contiguous property.**

All contiguously owned property shall be indicated on any map and shall be revealed on all applications for any approval of notice.

**22.15.030 Indication of undivided and merged property.**

All contiguously owned property not otherwise legally divided or property which is merged as a matter of law shall be included in the map approval of description, except as specifically provided herein.

**22.15.040 Merger.**

Property shall be deemed merged as a matter of law only if said property as shown on the latest equalized assessment roll as a unit or units, or as contiguous units, is held in common ownership, and:

A. Was “not legally divided” as defined herein; or

B. At the time it was divided did not conform to the minimum lot area requirements of the City so as to preclude use or development of the property, and at least one (1) of the contiguous parcels or units, or portions thereof, is not developed with a building for which a building permit has been issued or which was built prior to the time a building permit was required; or

C. The subdivision map creating the contiguous parcels was recorded prior to January 1, 1948, and at least one of said contiguous parcels or units, or portions thereof, is not developed with a building for which a building permit has been issued, or which was built prior to the time a building permit was required.

Mergers shall occur only to the extent necessary to conform the lots with the minimum lot area standards. Consolidations may be made in any configuration, subject to approval of the Director. For the purposes of this section, “not legally divided” means property shown on assessor’s maps as divided, and such division is contrary to the Subdivision Map Act, this title or predecessor regulations.

**22.15.045 Unmerged lots.**

Any merger or purported merger of parcels or units of property which occurred pursuant to this title, including all previous enactments of this title, which are inconsistent with the

provisions of EGMC Section 22.15.040, shall be of no force or effect and such parcels or units of property shall be deemed unmerged as provided in Section 66424.2 of the Government Code.

### **22.15.050 Lawful parcels.**

Parcels, for the purposes of this title, shall be considered lawfully created if:

A. A certificate of compliance, final parcel map or final subdivision map has been approved on or after March 4, 1972;

B. The property was divided subsequent to January 1, 1948, by a final subdivision map or final parcel map recorded prior to March 4, 1972;

C. The property was in fact divided by actual sale, lease or financing arrangement prior to March 4, 1972, and which said division complied with all laws in effect at the time of said division; or

D. The property was divided by court judgment or decree or other means only if such means are not governed by the Subdivision Map Act, or any ordinance of the City, provided the Council finds that no attempt was made to avoid the provisions of the Subdivision Map Act or City regulations. The burden of proof to enable the City Council to make its finding is the responsibility of the property owner.

## **Chapter 22.20**

### **PROCEDURES**

Sections:

22.20.005 Applications.

22.20.010 Submission of tentative map application.

22.20.012 Filing of vesting tentative maps.

22.20.015 Fees.

22.20.020 Notice and public hearing.

22.20.025 Advisory agency, tentative subdivision maps.

22.20.030 Advisory agency (special processing).



22.20.032 Advisory agency and appropriate planning commission for vesting tentative maps.

22.20.035 Advisory agency, tentative parcel maps.

22.20.036 Advisory agency – Boundary line adjustments.

22.20.060 Expiration of tentative map approval.

22.20.065 Moratorium.

22.20.070 Special procedures for final parcel maps.

22.20.071 Sale of designated remainder.

22.20.075 Waiver of final parcel maps.

22.20.076 Waiver of parcel maps for condominiums.

22.20.080 Action on tentative maps.

22.20.090 Extensions of time.

22.20.095 Extensions of time for related entitlements.

**22.20.005 Applications.**

The Planning Director shall adopt rules to implement the various processes generally set forth in this title and the Subdivision Map Act. The rules shall apply to, but not be limited to, instructions for preparing and completing applications for parcel maps, subdivision maps, certificates of compliance, reversions to acreage, and compliance with the California Environmental Quality Act.

**22.20.010 Submission of tentative map application.**

The tentative map shall be prepared in a manner acceptable to the Planning Department. The map shall be prepared by a registered civil engineer or licensed land surveyor and shall contain the following components unless waived at the discretion of the Planning Director and/or the City Engineer:

A. The tentative map shall show the following notes and statements:

1. Subdivision name and number;

2. A sufficient legal description for the property shown on the tentative map. A portion of a lot/section/parcel is not sufficient for this application;
3. A vicinity map showing roads, adjoining subdivisions, towns, creeks, railroads and other data sufficient to locate the subdivision;
4. Name, telephone number, and address of record owner or owners of the subdivision;
5. Name, address and telephone number of the subdivider;
6. Name, business address and telephone number of the registered (engineer) or licensed surveyor who prepared the tentative map;
7. Names, addresses and phone numbers of all service providers;
8. A statement of existing zoning and proposed zoning along with existing and proposed uses of the property;
9. A statement of the gross acreages of the overall subdivision;
10. A statement signed by the engineer/surveyor that all easements have been plotted or accounted for based on the current title report.

**B. Technical Map Requirements.** The map shall contain the following:

1. The scale of the map shall be such that all information can be shown without resorting to details. All scales are subject to approval of the Planning Director and shall include an eight and one-half by eleven (8.5" x 11") inch reduction;
2. The tentative map boundary shall have a distinctive border line which will set it apart from all other lines. Bearings, distances and curve data sufficient to define the boundary shall be shown;
3. The map shall show its relationship to all adjoining recorded subdivision maps. If any adjoining property is not covered by a subdivision map, the name of the record owner along with the current assessor's parcel number shall be shown;
4. A date, a north arrow, and graphic scale shall be shown;
5. A legend to define any terms or symbols if required.

**C. Current Land Uses and Conditions.** The following data shall be shown on the map that describes the current conditions of the land and surrounding areas and shall include, but not be limited to:

1. Topographic data of the proposed site and at least one hundred (100' 0") feet beyond its boundary shall be shown along with additional topography to define any additional drainage conditions that affect adjoining property, if applicable, and shall include, but not be limited to:

a. Existing contours at two (2' 0") foot intervals if the existing ground slope is less than five (5%) percent. Existing contours shall be represented by dashed lines or by screened lines. The origin of the contours must be shown along with a benchmark and a datum statement;

b. Type, circumference and drip line of existing trees with a trunk diameter of six (6") inches or more. Any trees proposed to be removed shall be so indicated;

c. The location and outline of existing structures identified by type along with square footage of each. Show all patios, porches, decks, overhangs and exterior stairways and indicate whether they are to remain or be removed. This requirement may be waived at the discretion of the City Engineer or Planning Director;

d. The approximate location of all areas of potential stormwater overflow; the location, width, and direction of flow of each water course; the flood zone of each water course; and the flood zone designation as indicated on the Flood Insurance Rate Map ("FIRM");

e. The location, pavement and right-of-way width, grade and name of existing streets or highways;

f. The widths, location, purpose and recording data of all existing easements. If any easements are required to be vacated or quitclaimed, a note to that effect shall be placed on the map;

g. The location and size of existing utilities including, but not limited to, sanitary sewers, fire hydrants, water mains, storm drains, street lights, water valves, utility boxes or vaults shall be indicated. Existing utility lines shall be dimensioned to the nearest property line or centerline. The location of existing overhead utility lines on peripheral streets shall be indicated;

h. The location of all railroads and grade crossings;

i. The location of all existing wells, abandoned wells and sumps.

D. Proposed Improvements. The following proposed improvements shall be shown and shall include, but not be limited to:

1. Adequate elevation information shall be shown to allow City staff to review the proposed drainage patterns and check conformance to various Municipal Code

requirements including, but not limited to, two (2' 0") foot contours, adequate spot elevations and proposed pad grades;

2. The approximate lot layout and the approximate dimensions of each lot and each building site, including a lot number. The lots shall be consecutively numbered;

3. The size, location and elevations of all drainage swales, pipes or facilities that will show that all on-site drainage will be conveyed to public drainage facilities;

4. The location, centerline radius of curves, right-of-way width, grades and names of all streets. Typical sections of all streets shall be shown. If streets are to be private and/or gated, a note shall be placed on the map;

5. The locations, width and type of all easements;

6. Proposed park and recreational sites, common areas, open space areas including method of ownership and management;

7. The location and size of all proposed utilities including, but not limited to, sanitary sewers, fire hydrants, water mains and storm drains;

8. Phasing. If the subdivider plans to file multiple maps on the tentative map, there shall be a clear statement on the tentative map indicating the intent of the subdivider to do so;

9. If any deviation from City standards is shown on the tentative map, a note shall be placed on the map to that effect and the deviation shown.

E. The following additional information may be required as part of the tentative map submittal and may include, but not be limited to, the following:

1. Soils Report. A soils report prepared by a soils engineer;

2. Traffic study;

3. A drainage study prepared to the satisfaction of the City Engineer.

F. Application Format and Additional Information. The Planning Director shall determine the number of tentative maps to be delivered. The applicant shall comply with Zoning Code Public Notice requirements. In addition, all tentative map applications shall be accompanied by the following:

1. Fees. A fee, as established by the City Council resolution, shall be required with all tentative map applications.

**22.20.012 Filing of vesting tentative maps.**

The minimum requirements for filing a vesting map are set forth in this title, commencing with EGMC Section 22.25.010. Applications for vesting maps shall be filed with the Planning Department and shall be processed in accordance with the Subdivision Map Act, the provisions of this title and the rules prepared by the Planning Director in EGMC Section 22.20.005. A proposed division of land which otherwise requires a tentative parcel map may instead be submitted for approval as a vesting tentative subdivision map whenever the subdivider desires the rights conferred by a vesting map.

#### **22.20.015 Fees.**

The Council shall by resolution adopt, and from time to time amend, a fee schedule which shall provide for, but not be limited by this reference to, the processing of all maps, appeals, complaints, reversions, certificates, lot line adjustments, or notices, as required by this title or the Subdivision Map Act. Such fee schedule may include a component for work accomplished by the assessor pursuant to EGMC Section 22.40.040. The fees provided for in this section shall not be applicable to maps or record of survey reviews which are initiated by the Council or by an advisory agency.

#### **22.20.020 Notice and public hearing.**

A. Tentative Subdivision Maps. The advisory agency shall hold a public hearing on each application for a tentative subdivision map and notice thereof shall be given as provided in Section 66451.3 of the Government Code. Any person may appear at such hearing and shall be heard. In addition to the notice required by Section 66451.3, notice shall also be given at least ten (10) days in advance of the public hearing as required and authorized in Section 66451.4 of the Government Code, except that notices shall be given to owners of property in accordance with the Zoning Code.

B. Vesting Tentative Subdivision Maps. The City Council and the Planning Commission shall hold public hearings on each application for a vesting map and notice thereof shall be given as provided in Section 66451.3 of the Government Code. Any person may appear at such hearings and shall be heard. In addition to the notice required by Section 66451.3, notice shall also be given at least ten (10) days in advance of the public hearings as required or authorized in Section 66451.5 of the Government Code, except that notice shall be given to owners of property in accordance with the Zoning Code.

#### **22.20.025 Advisory agency, tentative subdivision maps.**

Except as provided in EGMC Section 22.20.030, the Planning Commission is designated as the approval authority as to all matters relating to tentative subdivision

maps, and said commission is charged with the duty to approve, conditionally approve, recommend approval or disapprove such tentative subdivision maps.

**22.20.030 Advisory agency (special processing).**

A. The Elk Grove City Council shall serve as the approval authority as to all matters relating to tentative subdivision maps in those instances when tentative subdivision maps are filed with an application for a specific plan amendment or a General Plan amendment.

**22.20.032 Advisory agency for vesting Tentative Maps.**

The Elk Grove City Council is the approval authority as to all matters relating to vesting maps. The Planning Commission, after a public hearing, shall forward a recommendation to the Council on all vesting maps.

**22.20.035 Advisory agency, tentative parcel maps.**

Except as otherwise provided herein, the Planning Commission is designated as the approval authority as to all matters relating to tentative parcel maps, including reversion to acreage by parcel map.

**22.20.036 Advisory agency – Boundary line adjustments.**

The Planning Director is designated as the approval authority for all matters related to boundary line or lot line adjustments.

**22.20.060 Expiration of tentative map approval.**

A. Tentative Subdivision Map. The approval or conditional approval of a tentative subdivision map shall expire thirty-six (36) months from the date the map was approved or conditionally approved.

B. Vesting Tentative Subdivision Map. The approval or conditional approval of a vesting map shall expire thirty-six (36) months from the date the map was approved or conditionally approved.

C. Tentative Parcel Map. The approval or conditional approval of a tentative parcel map shall expire thirty-six (36) months from the date the map was approved or conditionally approved.

D. Effect of Map Modification. Modification of a tentative subdivision map, vesting tentative map, or tentative parcel map after approval or conditional approval shall not extend the time limits imposed by this section.

E. Effect of Expiration of Map. The expiration of the approved or conditionally approved tentative subdivision map, vesting tentative map, or tentative parcel map shall terminate all proceedings, and no final map or final parcel map for all or any portion of the real property included within the tentative subdivision map, vesting tentative map, or tentative parcel map shall be filed without first processing an application for a new tentative subdivision map, vesting tentative map, or tentative parcel map.

#### **22.20.065 Moratorium.**

The periods of time specified in this title for which an approved tentative parcel map, or tentative subdivision map, or vesting tentative map shall be valid shall not include:

A. Any period of time during which a development moratorium imposed after the approval of the map is in existence; provided, however, that the length of such moratorium does not exceed five (5) years. Once such moratorium is terminated, the approved map shall be valid for the same period of time as was left to run on the map at the time the moratorium was imposed; provided, however, that in no instance shall the map be valid for less than one hundred twenty (120) days after termination of the moratorium.

B. Any period of time during which a lawsuit has been filed and is pending in a court of competent jurisdiction involving the approval or conditional approval of a tentative parcel map or a tentative subdivision map if a stay of such time period is approved by the Council. Upon receipt of service of the initial petition or complaint, the City Clerk shall notify the subdivider of the service of the petition or complaint. The subdivider may, within ten (10) days of the receipt of the petition or complaint by the Council, apply to the Council for a stay. The request for stay shall be processed in the same manner as an appeal of an action of the Planning Commission; however, the Council shall, within forty (40) days of receipt of the request, hear the matter and either stay the time period for up to five (5) years or deny the requested stay.

#### **22.20.070 Special procedures for final parcel maps.**

A. A final parcel map shall be filed and recorded for any subdivision for which a tentative subdivision and final subdivision map is not required by the Subdivision Map Act except for subdivisions created by short-term leases (terminable by either party on not more than thirty (30) days notice in writing) of a portion of an operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code; provided, however, that upon a showing made to the Council based on substantial evidence that public policy necessitates such a map, this exception shall not apply. The final parcel map shall not be required for any conveyance or agreement made solely for the purpose of correcting, confirming or relocating a boundary common to abutting lots or parcels; provided, that the resulting lots comply with the provisions of this title and the

Zoning Code and that no additional lot is created. The boundary line adjustment shall be approved by resolution.

The final parcel map shall meet all of the requirements of the Subdivision Map Act and this title and shall show all dedications or offers of dedications thereon. An advisory agency or the Council may require that such dedications or offers of dedications be made by deed in lieu of, or in addition to, those appearing on the map.

B. When a final parcel map is required by this title, a tentative parcel map shall first be filed and approved by the advisory agency. A tentative parcel map shall meet all of the requirements for tentative maps provided by the Subdivision Map Act and this title.

**22.20.071 Sale of designated remainder.**

A designated remainder may subsequently be sold without any further requirement of the filing of a parcel map or final subdivision map if a certificate of compliance or conditional certificate of compliance is issued by the appropriate authority.

**22.20.075 Waiver of final parcel maps.**

An advisory agency may waive the requirements for the recordation of a final parcel map in any case when the land being divided consists of a lot or parcels shown on a recorded parcel map or final subdivision map and the full street improvements have been constructed or monumentation is evident or where each of the lots has a gross acreage of forty (40) acres or more or each of which is a quarter-quarter section or larger. The advisory agency may grant the waiver and will issue a certificate of compliance if:

A. The subdivider files an application with the Director, including any fees required, verifying the existence of monumentation in the installation of street improvements;

B. The application contains a legal description for each of the lots to be created; and

C. The advisory agency finds that the proposed division of land complies with requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and other requirements of this title.

**22.20.076 Waiver of parcel maps for condominiums.**

The Planning Commission or the City Council may waive the requirements for a tentative or final map imposed by the Subdivision Map Act for the construction of a residential condominium project on a single lawful parcel. The Public Works Director may waive the requirements for a tentative or final map imposed by the Subdivision



Map Act for the construction of a commercial or industrial condominium project on a single lawful parcel.

The procedure for determining whether such a waiver for a residential condominium is appropriate shall be initiated by an application for waiver filed with the Planning Director. An application for waiver for a commercial or industrial condominium shall be initiated by an application for waiver filed with the Public Works Director.

The application shall contain a legal description for the single lawful parcel and a description of the proposed condominium project. If an application for waiver on a residential condominium project is filed contemporaneously with an application to adopt or amend a specific plan, then the application for waiver shall be first considered by the Planning Commission at a public hearing. After this hearing, the Planning Commission shall provide a written recommendation to the City Council which shall make the final determination on the application. All other applications for waiver on a residential condominium project shall be considered by the Planning Commission at a public hearing. The Planning Commission shall make the final determination on these applications for waiver.

Applications for waiver of final or tentative maps on a commercial or industrial condominium project on a single lawful parcel shall be considered and granted or denied by the Public Works Director.

No applications for a waiver of the requirement for a tentative or final map for the construction of a condominium project on a single lawful parcel shall be granted unless it is found that the proposed division of land complies with the requirements of the Subdivision Map Act and the Elk Grove Municipal Code as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act and the Elk Grove Municipal Code.

#### **22.20.080 Action on tentative maps.**

In addition to any other basis provided in this title or the Subdivision Map Act, an advisory agency or the Council shall disapprove a tentative subdivision map, vesting subdivision map, or tentative parcel map if it finds that the tentative subdivision map, vesting subdivision map, or tentative parcel map is inconsistent with an adopted specific plan; violates the provisions of the Zoning Code as to area, setback, frontage, or any other requirements for which no variance or exception has been granted; enlarges, expands or extends a nonconforming use of the land under the Zoning Code; or the division of land violates any other City ordinance or code provision.

### **22.20.090 Extensions of time.**

Any tentative subdivision map or vesting subdivision map is eligible for an extension of time, provided final approval for such extension occurs prior to the expiration of the original map. The hearing procedures for an extension of time shall be the same as for resubmittal of the map. Upon filing of a timely application for an extension of time, the map shall automatically be extended for sixty (60) days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. An extension of time may not be granted for more than thirty-six (36) months, but may be granted for a lesser time at the sole discretion of the final hearing body. A subdivider may apply for a resubmission of the map rather than an extension of time, in which case the map may be approved after the expiration date of the original map. The expiration date of an approved resubmitted map shall be as set forth in EGMC Section 22.20.060.

### **22.20.095 Extensions of time for related entitlements.**

Notwithstanding any other provision of this code or of the Zoning Code, any entitlement, development permit or other approval which would expire pursuant to this code or the Zoning Code, but which was approved concurrently with and pertains to any approved tentative subdivision or parcel map the expiration date of which was automatically extended by the provisions of Sections 66452.11 and 66452.13 of the Government Code, or by the provisions of any other similar section that may from time to time be added to the Government Code, shall be extended for the same period as that provided by said section for the approved tentative subdivision or parcel map to which it pertains.

## **Chapter 22.24**

### **WATER AND SEWER REQUIREMENTS**

Sections:

22.24.005 Water and sewer requirements.

22.24.010 Exceptions.

22.24.015 Request for exceptions.

22.24.020 Definitions.

#### **22.24.005 Water and sewer requirements.**

Water and sewer service shall be provided as set forth below:

A. Wells and septic tanks shall be constructed in compliance with the standards and codes of the county.

B. For subdivisions with lots less than two (2) gross acres in size, domestic water shall be provided to all lots from a public water supply source and distribution system conforming to the standards of the county or a water purveyor acceptable to the Public Works Director.

C. The water purveyor shall not be a homeowners' association or mutual water company or corporation. Exceptions to this restriction may be granted by the advisory agency or the City if it is determined that the proposed subdivision lies within the existing franchise area of a mutual water company or corporation, or if the advisory agency or the Council makes a finding in accordance with the provisions of this chapter.

D. For subdivisions with lots less than two (2) gross acres in size, a water meter setter shall be installed at each service connection conforming to the standards of the county or the water purveyor which will operate the system after completion.

#### **22.24.010 Exceptions.**

The advisory agency or the Council may authorize exceptions to any of the requirements of this chapter, unless a requirement specifically states that an exception cannot be granted. Such exception may be granted if the advisory agency or the Council finds that the requirement imposes an unreasonable economic hardship and that granting the exception will not be detrimental to the health, safety, comfort or general welfare of persons residing or working in the subdivision. The appropriate authority may designate such conditions in connection with the granting of an exception as it deems necessary to protect the purposes of this chapter.

#### **22.24.015 Request for exceptions.**

The applicant must request in writing that an exception from the requirement be granted. Such request shall be made when the application is submitted, and any such request shall state the reasons for the request and any claim of economic hardship shall be substantiated.

#### **22.24.020 Definitions.**

The following definitions shall apply for the purposes of this chapter:

“Service connection” means the point of connection of the customer’s piping with the meter or meter setter. Normally, this is at the lot property line or easement line.

“Water meter setter” means a fitting that allows meter installation and replacement without disturbing the piping system; often referred to as a “meter yoke.”

## **Chapter 22.25**

### **VESTING MAPS**

Sections:

22.25.010 Limitations on vesting maps.

22.25.020 Effect of approval.

22.25.030 Administration of vested rights.

22.25.040 Termination of vested rights.

22.25.050 Minimum requirements for filing a vesting map.

#### **22.25.010 Limitations on vesting maps.**

Whenever this title requires that a tentative subdivision map or a tentative parcel map be filed, a vesting subdivision map may instead be filed, subject, however, to the following limitations:

A. A vesting map shall not be approved unless the City Council finds it to be consistent with the adopted General Plan. Except as otherwise provided in subsection (C) of this section, a vesting map may not be filed concurrently with a General Plan amendment nor during the period a General Plan amendment for the area covered by the proposed map is in process.

B. Applications for projects which require amendments to an adopted community plan, or an adopted specific plan, or the Zoning Code, or which require discretionary approvals pursuant to the Zoning Code, including, but not limited to, special development permits, use permits, development plan reviews, exceptions, special review of parking or variances, may not include an application for a vesting map unless all needed applications for such approvals for the project are concurrently filed with the vesting map. Vesting maps may not be approved with the condition that needed plan amendments, zoning and discretionary approvals be subsequently secured.

C. Notwithstanding any other provision of this code, an application for a vesting map may be filed concurrently with an application to amend the General Plan; provided, that the area covered by the vesting map is included in the area covered by the application to amend the General Plan and is also included in either a concurrently filed or previously filed and pending application for a specific plan.

### **22.25.020 Effect of approval.**

The approval of a vesting tentative map by the City Council shall confer a vested right to apply for permits needed to proceed with development and have the City exercise its discretion to approve, disapprove, or approve such permits with conditions, on the basis of ordinances, policies, and standards in effect at the time the application was determined to be complete pursuant to Section 65940 of the Government Code.

A. This chapter does not enlarge, diminish, or alter the power of the City Council to deny approval of the requested project or any part thereof, or to impose conditions on the approval of a project.

B. Nothing in this chapter removes, diminishes, or affects the obligation of any subdivider or local agency to comply with the conditions and requirements of any state or federal laws, regulations, or policies.

C. In the event that Section 66474.2 of the Government Code is repealed, any subsequent approvals of vested maps shall confer a vested right to proceed with development in substantial compliance with ordinances, policies, and standards in effect at the time the vesting map is approved or conditionally approved, rather than at the time the application was determined to be complete.

D. Notwithstanding this chapter, the City Council or agencies thereof may condition or deny a permit, extension or entitlement, including, but not limited to, final maps and building permits, if it determines any of the following:

1. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
2. The condition or denial is required in order to comply with state or federal law.

### **22.25.030 Administration of vested rights.**

In administering an approved vesting map, the following shall be applicable:

A. Approval of a vesting map applies only to actions considered and approved by the City Council. If the vesting map was approved with conditions, the approval is subject to those conditions. If related applications for discretionary permits were approved in conjunction with the vesting map, the approvals are subject to applicable ordinances, policies, and standards granting those entitlements, including any conditions thereon.

B. The rights conferred by approval of a vesting map shall last two (2) years from recordation of the final map.

C. When several final maps are recorded on various phases of a project covered by a single vesting tentative map, the initial “vesting period” shall begin for each phase on the date the final map for that phase is recorded.

D. Modifications that are in substantial conformance to the approved plans may be permitted upon approval of the Planning Director. In the event the Planning Director determines that the modifications are not in substantial conformance, the determination may be appealed by the applicant through the normal appeal procedures of this title. Alternatively, the Planning Director may choose to refer the matter to the approval body of the vesting map for a determination. Any approved or denied modification request shall not alter the effective period or rights conferred by approval of a vesting map.

#### **22.25.040 Termination of vested rights.**

Vested rights that have been conferred shall end on the occurrence of the following, whichever comes first:

A. A final map is not recorded within three (3) years of approval of the vesting tentative map or, if an extension of time has been granted, within the time specified by that extension. The time allowed for recordation may be extended by a moratorium or a stay under EGMC Section 22.20.065; provided, that such moratorium or stay would have prevented a final map from being recorded during that period.

B. If a final map is recorded, the vesting rights shall end two (2) years after the date of final map recordation.

C. The expiration of a building permit, including extensions, issued pursuant to a vesting map, and issued during the time vesting rights are valid.

D. Vesting rights shall automatically be extended by any time used by a City department for processing a complete application for a grading permit or for design or architectural review, if the time used by the City exceeds thirty (30) days from the date a complete application is filed.

#### **22.25.050 Minimum requirements for filing a vesting map.**

The provisions for filing a complete application for a tentative map, as set forth in EGMC Section 22.20.010, are applicable to vesting maps; however, the requirements for filing a vesting map shall also include:

A. At the time a vesting tentative map is filed it shall have printed conspicuously on its face the words “Vesting Tentative Map.”

B. In addition to the vesting tentative map the following items are required to be submitted as part of the vesting tentative map submittal:

1. A grading plan in conformance with the City grading ordinance and design standards. The grading plan shall contain precise grading of the entire subdivision and shall include all existing and proposed topography. The proposed topography shall include, but not be limited to, the elevations on all building pads, street grades and elevations at all lot corners;
2. Complete sanitary sewer plans accompanied by a sewer area study;
3. Complete water plans;
4. Complete storm drain plans;
5. Complete street plans;
6. Complete landscape plans;
7. Any geological studies, if required;
8. A complete drainage study. The study shall include, but not be limited to, a 10-year drainage study along with the 100-year drainage study. The 100-year study shall show the Hydraulic Grade Line (HGL) at critical locations for each subdivision unit;
9. A complete site plan showing the buildings and exterior features of each lot. For single-family detached lots the site plan shall show the typical building envelopes. It shall also show all building setbacks, building heights, number of stories, driveway locations, landscaped areas and all other improvements proposed to be installed (this may be waived at the discretion of the City Engineer and/or Planning Director);
10. Any engineering calculations and cost estimates for all improvement plans;
11. A tree preservation plan;
12. A soils report prepared by a soils engineer; and
13. Any and all other studies, reports, plans, specifications or additional information required by the City Engineer or the Planning Director.

## **Chapter 22.30**

### **DEDICATIONS**

#### Sections:

22.30.005 Streets, alleys, drainage, public utility easements, and other public easements.

22.30.010 Bicycle paths.

22.30.015 Local transit facilities.

22.30.020 School sites.

22.30.025 Waiver of direct street access.

**22.30.005 Streets, alleys, drainage, public utility easements, and other public easements.**

As a condition of approval of a tentative subdivision or tentative parcel map, the subdivider shall dedicate or make an irrevocable offer of dedication of real property within the subdivision that is needed for streets, alleys, including access rights and abutters' rights, drainage, public utility easements, scenic easements, open space easements, and other public easements. In addition, the subdivider shall improve or agree to improve all streets, alleys, including access rights and abutters' rights, drainage, public utility easements and other easements.

**22.30.010 Bicycle paths.**

Whenever a subdivider is required to dedicate roadways to the City, said subdivider may also be required to dedicate additional land to provide bicycle paths for the use and safety of the residents of the subdivision; provided, however, that the subdivision as shown on the final subdivision map thereof contains two hundred (200) or more parcels. This requirement for dedication of bicycle paths shall not be defeated by a subdivider by filing multiple final maps relating to the approval or conditional approval of a single tentative subdivision map as authorized by Section 66456.1 of the Government Code.

**22.30.015 Local transit facilities.**

As a condition of approval of a tentative subdivision map, a subdivider shall dedicate or make an irrevocable offer of dedication of real property within the subdivision for local transit facilities including, but not limited to, such facilities as bus turnouts, benches, shelters, landing pads and similar items which directly benefit the residents of the subdivision, provided the tentative map indicates that the subdivision has the potential for not less than two hundred (200) dwelling units if developed to the maximum density as shown on the adopted General Plan and specific plan for the area, or contains one hundred (100) acres or more, and the advisory agency or Council finds that transit services are or will, within a reasonable time period, be made available to such subdivision. This section shall not apply to condominium projects or stock cooperatives



which consist of the subdivision of air space in an existing apartment building which is more than five (5) years old, when no new dwelling units are added by the subdivision.

#### **22.30.020 School sites.**

As a condition of approval of a final map, a subdivider who develops or completes the development of one or more subdivisions within any elementary school district within the City of Elk Grove shall dedicate to the school district such lands as the Council deems to be necessary for the purpose of constructing thereon schools necessary to assure the residents of the subdivision adequate elementary school service.

The requirement of dedication shall be imposed at the time of approval of the tentative map. If, within thirty (30) days after the requirement of dedication is imposed by the City or such other time period the subdivider and school district mutually agree on, the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall automatically terminate. The required dedication may be made at any time before, concurrently with, or up to sixty (60) days after the filing of the final map on any portion of the subdivision. The school district shall, if it accepts the dedication, repay to the subdivider or to his successors in interest the cost of the land plus the cost of improvements and taxes as specified in Section 66478 of the Government Code. The provisions of this section shall not be applicable to a subdivider who has owned the land being subdivided for more than ten (10) years prior to the filing of the tentative map.

#### **22.30.025 Waiver of direct street access.**

An advisory agency or the Council may impose a requirement that any dedication or offer of dedication of a street shall include a waiver of direct access rights to such street from any property shown on a final subdivision map or final parcel map as abutting thereon. The Director shall establish standards to be included as part of the improvement standards to guide the advisory agencies and the Council in applying this section.

### **Chapter 22.40**

#### **PARK AND RECREATION DEDICATION AND FEES**

Sections:

22.40.000 Application.

22.40.005 Authority.

- 22.40.010 Purpose.
- 22.40.015 Parks and recreation land and impact mitigation fees.
- 22.40.020 Procedure for subdivider.
- 22.40.025 Determining the local agency.
- 22.40.030 Dedication requirements.
- 22.40.035 Calculating area of land dedication.
- 22.40.040 Calculation of in lieu fees.
- 22.40.041 Calculation of in lieu parkland fees – East Franklin Specific Plan Area.
- 22.40.045 Alternative calculation method.
- 22.40.050 Standards for final maps where tentative map approved prior to 1983.
- 22.40.055 Exemption.
- 22.40.060 Recreational community gardening.
- 22.40.065 Credit for privately owned facilities.
- 22.40.070 Computation of credit.
- 22.40.075 Access requirements.
- 22.40.080 Sale of dedicated land.
- 22.40.085 Credit for park and recreational improvements and equipment.

**22.40.000 Application.**

This chapter and the Quimby Act shall only apply to approvals of development projects, as defined in the Mitigation Fee Act, in the areas in the City in which this chapter applies. This chapter and the Quimby Act shall not apply to that area in the City known as Vintara Park on the northeast corner of Bond Road and Waterman Road consisting of Assessor Parcel Numbers 127-0010-002, 127-0010017, 127-0010-018, 127-0010-019, 127-0010-020 and 127-0010-040.

#### **22.40.005 Authority.**

This chapter is enacted pursuant to the authority granted by Section 66477 of the Government Code. The park and recreational facilities for which dedication of land and/or payment of a fee is required shall be in accordance with the local recreational element of the General Plan. Land dedication under this chapter shall conform to the most current City General Plan, to any adopted community plan, and the applicable provisions of Section 66477 of the Government Code.

#### **22.40.010 Purpose.**

As a condition of approval of a tentative subdivision map or tentative parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the City for neighborhood and community park or recreational purposes at the time specified by the City according to the standards and formula contained in this chapter.

#### **22.40.015 Parks and recreation land and impact mitigation fees.**

A. The City Council may, at its sole discretion, utilize the Mitigation Fee Act, Section 66000 et seq., of the Government Code, to impose parks and recreation impact fees as a condition to the approval of a development project, as defined in the Mitigation Fee Act. All fees imposed pursuant to Section 66000 et seq., of the Government Code shall be paid to the City.

B. The City Council may, at its sole discretion, use any other of its powers to obtain land and/or monies for parks and recreation.

#### **22.40.020 Procedure for subdivider.**

At the time of filing of a tentative subdivision map for approval, the subdivider of the property shall, as a part of such filing, indicate whether the subdivider desires to dedicate property for park or recreation purposes, or whether the subdivider desires to pay a fee in lieu thereof, or a combination of dedication and in lieu fees. If the subdivider desires to dedicate land for this purpose, the subdivider shall designate the area thereof on the tentative subdivision map as submitted.

#### **22.40.025 Determining the local agency.**

A. Prior to the time of tentative subdivision or tentative parcel map approval, the Council shall have determined whether the City or another public agency is the appropriate local public agency providing park and recreation services on a community-wide level and to the area within which the proposed development will be located. Pursuant to such determination, land or fees required under this chapter shall be conveyed or paid directly to the designated agency, if such agency elects to accept the land or fee.

B. In the event park and recreation services and facilities are provided by a public agency other than the City, the amount and location of land to be dedicated or fees to be paid shall be jointly determined by the Council and the Board of Directors of such public agency.

#### **22.40.030 Dedication requirements.**

The advisory agency or Council shall require the dedication of all land, the payment of fees in lieu thereof, or a combination of both as provided herein, for park or recreational purposes as a condition to the approval of a tentative subdivision or tentative parcel map; provided, that:

A. The land, fees, or combination thereof are to be used only for the purposes of developing new and rehabilitating existing park or recreational facilities to serve the subdivision.

B. The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

C. The Council and/or the designated local public agency shall develop a schedule specifying how and when it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected shall be committed within five (5) years after the payment of fees or the issuance of building permits on one-half (0.5) of the lots created by the subdivision, whichever occurs later. If such fees are not committed, they shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

D. Only the payment of fees may be required in subdivisions containing fifty ( $\leq 50$ ) parcels or less. However, nothing in this chapter shall prohibit the dedication and acceptance of land for park and recreation purposes in subdivisions of fifty ( $\leq 50$ ) parcels or less, if the subdivider voluntarily proposes such dedication and the land otherwise meets the requirements of this title.

E. Subdivisions containing less than five (5) parcels and not used for residential purposes shall be exempted from the requirements of this chapter; provided, however, that a condition may be placed on the approval of such parcel map that if a building permit is requested for construction of a residential structure or structures on one (1) or more of the parcels within four (4) years, the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit.

F. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements, together with any equipment located thereon, shall be a credit against the payment of fees or dedication of land required by this chapter, as determined pursuant to EGMC Section 22.40.085.

#### **22.40.035 Calculating area of land dedication.**

A. If the advisory agency or City Council requires the dedication of land, the subdivider or owner shall dedicate land for neighborhood and community parks according to the formula  $D \times F = A$  in which:

D equals the number of dwelling units. F equals a "factor" herein described. A equals the amount of land, in acres, to be dedicated.

B. "Dwelling unit" means one (1) or more rooms in a building or structure or portion thereof designed exclusively for residential occupancy by one (1) family for living or sleeping purposes and having kitchen and bath facilities, including mobile homes.

"Single-family area" means an area of land used for or proposed for detached buildings designed for occupancy by one (1) family.

"Multiple-family area" means an area of land used for or proposed for residential occupancy in buildings or structures designed for two through four (2 - 4) families for living or sleeping purposes and having a kitchen and bath facilities for each family, including two-family, group and row dwelling units.

"Apartment area" means an area of land used for or proposed for residential occupancy in buildings or structures designed for five (5) or more families for living or sleeping purposes and having kitchen and bath facilities for each family. Included are condominiums and cluster developments.

"Mobile home development" means an area of land used for or proposed for residential occupancy in vehicles which require a permit to be moved on a highway, other than a motor vehicle designed or used for human habitation and for being drawn by another vehicle.

C. The factors 0.0083, 0.006, 0.0046 and 0.0052 are constants determined from the 2000 Federal Census Analysis of the population trends and studies of Sacramento County which, when multiplied by the number of dwelling units permitted in the subject area, will produce three (3) acres per one thousand (1,000) population to be devoted to neighborhood or community park facilities. This limit is specified in Section 66477 of the Government Code, and limits the objective in the recreation element of the General Plan, unless a higher standard is adopted pursuant to EGMC Section 22.40.045. The Planning Director shall re-establish such factors annually.

(Fs = 0.0083 relating to single-family dwelling units) (Fm = 0.006 relating to multiple-family dwelling units) (Fa = 0.0046 relating to apartment, cluster and condominium dwelling units) (Fmh = 0.0052 relating to mobile home development dwelling units)

D. In multiple-family and apartment areas, the number of dwelling units shall be calculated from the maximum density permitted in the proposed zone, as determined from the Zoning Code, including any density bonus, unless the subdivider can demonstrate that the development will contain a lesser number of dwelling units. For tentative parcel maps in multifamily zones which require development plan review pursuant to the Zoning Code, a condition may be added to the tentative parcel map stating that the number of dwelling units may be calculated using the density tentatively approved pursuant to development plan review, and such review shall not become final until the required land or improvements are dedicated (or fees in lieu thereof are paid by the subdivider) to the satisfaction of the City.

E. Unless a specific written request is made by the applicant, fees shall be payable at the time of the recording of the final map or parcel map. Upon the written request of the applicant, the Planning Commission may recommend and the City Council may add a condition to any map contemplated by subsection (D) of this section for multifamily development, whether submitted as a parcel map or subdivision map, stating that required land or dedication or improvements or the payment of an in lieu fee may occur after the recordation of the final or parcel map and that required land or dedication or improvements or the payment of an in lieu fee shall occur at some later time but not later than prior to the issuance of building permits.

**22.40.040 Calculation of in lieu fees.**

Where the advisory agency or Council requires the payment of in lieu fees, the amount to be paid shall be a sum calculated pursuant to the following formula:

$$A \times V = M$$

where, A = the amount of land required for dedication as determined by EGMC Section 22.40.035 or 22.40.045; V = fair market value (per acre) of the property to be subdivided, as established by an appraisal at the time of payment, by the office of the County Assessor, based on the proposed land use; and M = the number of dollars to be paid in lieu of dedication of land.

**22.40.041 Calculation of in lieu parkland fees – East Franklin Specific Plan Area.**

A. In the formula “A x V = M” set forth in EGMC Section 22.40.040, “V” (value) will not be established by the Office of the County Assessor, but is initially established at One Hundred Twenty-Five Thousand and no/100<sup>ths</sup> (\$125,000.00) Dollars per acre as part of

the public facilities financing plan for the East Franklin Specific Plan Area. This is the value that all property owners in the East Franklin Specific Plan Area must accept as total compensation from the Cosumnes Community Services District (“the District”) for the transfer of title to parkland in excess of the acreage otherwise required to be dedicated by this chapter.

B. The dollar value of “V” is subject to adjustment any time the East Franklin public facilities financing plan is being reviewed by the City and must be reviewed at least every three (3) years at the written request of the District or any property owner whose property is located within the boundaries of the East Franklin Specific Plan Area. At each review a new appraised or agreed-upon fair market value will be established for “V” by resolution adopted by the City Council following a noticed public hearing. If at the time the adjustment is being considered there are twenty-five (25%) percent or less of the Equivalent Dwelling Units (EDUs) approved for the East Franklin Specific Plan, the City Council in establishing a new value for “V” may deviate from the appraised or agreed-upon value if the City Council finds that the resulting in lieu park dedication fee would be prohibitively high and thereby jeopardize the build-out of the planning area.

C. When a property owner in the East Franklin Specific Plan Area has been required to convey title to parkland acreage in excess of the acreage required to be dedicated by this chapter, the property owner must accept and shall be compensated for such over-dedicated parkland at the per acre value established pursuant to subsections (A) and (B) of this section. If the district has insufficient in lieu parkland dedication fees collected from within the boundaries of the East Franklin Specific Plan Area to pay the full purchase price, or should those funds already be committed as hereinafter defined in subsection (F) of this section, the property owner must accept a noninterest-bearing promissory note from the district. Subject to the definition of “priorities” described in subsection (F) of this section, payments would be due semi-annually, but only from the uncommitted funds available in the in lieu parkland dedication fee account established for the East Franklin Specific Plan Area.

D. When “V” is re-examined pursuant to subsection (B) of this section and there is an outstanding balance owed on a promissory note or notes after disbursement of all the funds in the in lieu parkland dedication fee account established for the East Franklin Specific Plan Area and:

1. The new per acre dollar value of “V” is less than the dollar value of “V” when the note or notes were issued, then a “supplemental in lieu parkland dedication fee” will be established at the same time the new dollar value of “V” is adopted; said fee to be paid at the time a final subdivision map or a development plan for a multifamily project is presented to the City for approval. The supplemental in lieu parkland dedication fee will equal the total amount of the “shortfall,” as defined in subsection (F) of this section,

allocated to all unmapped lots and zoned multifamily property located within the boundaries of the East Franklin Specific Plan Area as they exist at the time the new dollar value of “V” is established and will be paid on each future lot or multifamily unit in addition to the in lieu parkland dedication fee or parkland dedication otherwise due in accordance with this chapter; or

2. The new per acre dollar value of “V” is more than the dollar value of “V” when the existing note or notes were issued, then an “in lieu parkland dedication fee credit” will be established at the same time the new dollar value of “V” is adopted by allocating the “surplus,” as defined in subsection (F) of this section, to all unmapped lots and zoned multifamily property located within the boundaries of the East Franklin Specific Plan Area as they exist at the time the new dollar value is established for “V.” This credit will be applied or reimbursed at the time a final subdivision map or a development plan for a multifamily project is presented to the City for approval. A property owner dedicating parkland would receive the credit as a cash payment. If at the time of the parkland dedication there is insufficient or otherwise committed funds available in the in lieu parkland dedication fee account for the East Franklin Specific Plan, the property owner must accept a noninterest-bearing promissory note from the district. Subject to the priorities described in subsection (F) of this section, payments would be due semi-annually, but only from the uncommitted funds available in the in lieu parkland dedication fee established for the East Franklin Specific Plan Area.

E. When “V” is re-evaluated pursuant to subsection (B) of this section and designated parkland within the East Franklin Specific Plan has not been available for acquisition resulting in the accumulation of funds in the in lieu parkland dedication fee account:

1. Based upon a dollar value of “V” which is less than the new established dollar value of “V,” a “shortfall,” as defined in subsection (F) of this section, will result, requiring a “supplemental in lieu parkland dedication fee” be established at the same time the new dollar value of “V” is adopted; said fee to be paid at the time a final subdivision map or a development plan for a multifamily project is presented to the City for approval. The supplemental in lieu parkland dedication fees will equal the total amount of the “shortfall” allocated to all unmapped lots and zoned multifamily property located within the boundaries of the East Franklin Specific Plan Area as they exist at the time the new dollar value of “V” is established, and will be paid on each future lot or multifamily unit in addition to the in lieu parkland dedication fee or parkland dedication otherwise due in accordance with this chapter; or

2. Based upon a dollar value of “V” which is more than the new established dollar value of “V,” then an “in lieu parkland dedications fee credit” will be established at the same time the new dollar value of “V” is adopted by allocating the “surplus,” as defined in subsection (F) of this section, to all unmapped lots and zoned multifamily property



located within the boundaries of the East Franklin Specific Plan Area as they exist at the time the new dollar value is established for "V." This credit will be applied or reimbursed at the time a final subdivision map or a development plan for a multifamily project is presented to the City for approval. A property owner dedicating parkland would receive the credit as a cash payment. If at the time of the parkland dedication there are insufficient or otherwise committed funds available in the in lieu park dedication fee account for the East Franklin Specific Plan, the property owner must accept a noninterest-bearing promissory note from the district. Subject to the priorities described in subsection (F) of this section, payments would be due semi-annually, but only from the uncommitted funds available in the in lieu parkland dedication fee account established for the East Franklin Specific Plan Area.

#### F. Definitions.

1. The "priority" of all payments to be made by the district shall be established by the date of the promissory note. Notes first issued shall be paid in full before any payments are due to subsequent note holders. The district is obligated to make payments on any notes issued pursuant to this section only from the proceeds in the in lieu parkland dedication fee account established for the East Franklin Specific Plan Area and from no other funds of the district.

2. The "shortfall" is defined as either:

a. The difference between the value of the number of acres represented by the unpaid balance owed on the promissory note or notes and the value of these acres at the new lower dollar value for "V"; or

b. The difference between the value of the number of acres represented by the accumulated in lieu parkland dedication fee and the value of these acres at the new higher dollar value for "V."

3. The "surplus" is defined as either:

a. The difference between the value of the number of acres represented by the unpaid balance owed on the promissory note or notes and the value of these acres at the new lower dollar value for "V"; or

b. The difference between the value of the number of acres represented by the accumulated in lieu parkland dedication fee and the value of these acres at the new higher dollar value for "V."

**22.40.045 Alternative calculation method.**

A. This section specifies the alternative method to that specified in EGMC Section 22.40.035 for determining the factors used in calculating the area of land to be dedicated.

B. The City Parks and Recreation Department or any other local public agency providing parks may apply to the City Council for a determination of the standard for existing neighborhood and community park acreage. In its application, the agency shall present its calculations, reports and other evidence showing that the amount of existing neighborhood and community park area exceeds three (3) acres of park area per one thousand (1,000) members of the population of the City or applicable local agency providing parks. The calculation shall be derived pursuant to Section 66477(b)(1) of the Government Code.

C. If the City Council determines after a noticed public hearing that the standard for existing neighborhood and community park acreage exceeds three (3) acres of parks for one thousand (1,000) members of the population of the City or local public agency, it shall adopt a resolution setting such standard as applicable as of that date to dedication or fees for maps in that jurisdiction. The resolution shall be transmitted to the Secretary of the Planning Commission, the Development Review Committee, and the requesting agency. Procedures shall then be initiated to include such standards into this chapter.

D. The amount of land dedicated or fees paid in lieu thereof as a condition to the approval of a tentative map or parcel map in the jurisdiction of the local public agencies specified in this section shall be calculated using the following factors instead of those specified in EGMC Section 22.40.035.

ACREAGE	Fs	Fm	Fa	Fmh
DEDICATION	(SINGLE	(MULTIPLE	(APARTMENTCLUSTER	(MOBILE-
<u>REQUIREMENT</u>	<u>FAMILY)</u>	<u>FAMILY)</u>	<u>CONDOMINIUM</u>	<u>HOME</u>
5.00	0.0138	0.0101	0.0077	0.0086

**22.40.055 Exemption.**

This chapter shall not apply to:

A. Commercial or industrial subdivisions;

B. Condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building which is more than five (5) years old when no new dwelling units are added;

C. Tentative subdivision maps or tentative parcel maps in agricultural or agricultural residential zones as defined in the Zoning Code when more than fifty (50%) percent of the lots created exceed two (2) gross acres each;

D. A tentative subdivision or tentative parcel map of existing multifamily residential units which are more than five (5) years old when no new dwelling units are added; or

E. A lot or parcel within a tentative subdivision or tentative parcel map that contains a single-family dwelling that is more than five (5) years old when no new dwelling units are added to said lot or parcel.

#### **22.40.060 Recreational community gardening.**

Land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of such land, of plant material not for sale, shall be deemed a park and recreational purpose.

#### **22.40.065 Credit for privately owned facilities.**

A. The Council may grant credit for privately owned and maintained open space or local recreation facilities, or both, in planned unit developments or residential townhouse units, or mobile home developments or special planning areas, as defined in the Zoning Code. Such credit shall be subtracted from the dedication or fees, or both; provided:

1. Yards, patio court areas, setbacks, and other open space areas required by this title and the Zoning Code shall be maintained;

2. Provision is made by written agreement or recorded covenants that the private areas be adequately maintained;

3. The use of private open space or recreation facilities is limited to park and local recreation purposes and shall not be changed to another use without the written consent of the Council.

B. Land or facilities which may qualify for credit will generally include the following:

1. Open spaces, which are generally defined as parks and parkway areas, ornamental parks, extensive areas with tree coverage, lowlands along streams or areas of rough terrain when such areas are extensive and have natural features worthy of scenic preservation, golf courses, or open areas on the site in excess of twenty thousand (20,000 ft<sup>2</sup>) square feet;

2. Court areas for tennis, badminton, shuffleboard or similar hard-surfaced areas designed and used exclusively for court games;
3. Recreational swimming areas defined as fenced areas devoted primarily to swimming and diving, including decks, lawned area, bathhouses, or other facilities developed and used exclusively for swimming and diving and consisting of no less than fifteen (15 ft<sup>2</sup>) square feet of water surface area for each three (3%) percent of the population of the subdivision;
4. Recreation buildings designed and primarily used for the recreational needs of the residents of the development;
5. Special areas defined as areas of scenic or natural beauty, historic sites, hiking, riding or motorless bicycle trails, including pedestrian walkways separated from public roads, planting strips, lake sites, hiking, riding or motorless bicycle trails, including pedestrian walkways separated from public roads, planting strips, lake site or river beaches, improved access or right-of-way in excess of the requirements of EGMC Section 22.40.035, and similar types of open space or recreational facilities.

#### **22.40.070 Computation of credit.**

The categories for credit described in EGMC Section 22.20.065 shall be given equal weight, each category not to exceed twenty (20%) percent of the total dedication or fee which may be required by the Council. The Council may grant additional credit for each category if there is substantial evidence that:

- A. The open space or recreational facility is above average in aesthetic quality, arrangement or design;
- B. The open space or recreational facility is clearly proportionately greater in amount or size than required by this title or usually provided in other similar types of development;  
or
- C. The open space or recreational facility is situated so as to complement open space or local recreational facilities in other private or public developments.

#### **22.40.075 Access requirements.**

All land offered for dedication for park and recreational purposes shall have access on at least one (1) existing or proposed public street. This requirement may be waived by the Council if the Council determines that the public street access is unnecessary for the maintenance of the park area or use thereof by the residents.

#### **22.40.080 Sale of dedicated land.**

The subdivider or owner and the Council or the Director of a local park and recreational district may, after dedication of the land and before construction of the first dwelling unit, agree to sell the land dedicated and use the proceeds thereof towards the acquisition of a more suitable site. Such sale is subject to the limitations imposed on disposition of park property set forth in the Government Code.

#### **22.40.085 Credit for park and recreational improvements and equipment.**

A. If the subdivider proposes to receive credit for providing park and recreational improvements to the land the subdivider has dedicated, or equipment located thereon, the following procedure shall be followed. At the time of filing for the tentative map, the subdivider shall notify the local agency providing park and recreational services to the area within which the proposed development will be located that he or she intends to receive credit for park and recreational services to the area within which the proposed development will be located, and that he or she intends to receive credit for park and recreational improvements to the dedicated land and equipment located on that land. At the time of approval of the tentative map, the amount of land to be dedicated necessary to comply with this chapter shall be calculated pursuant to EGMC Section 22.40.035 or 22.40.045. As a condition of approval of such tentative map, the developer shall be required to dedicate the calculated amount of land or its equivalent in fees or credits at the time of filing the final map, and the developer shall sign an agreement with the local agency stating that land, and any equipment located thereon, shall be calculated and dedicated at the time of approval of the final map in an amount equivalent to the current value of the amount of land required to be dedicated as a condition of the tentative map.

B. Such land, improvements and equipment may be accepted by the local agency if such land, improvements and equipment complies with its master plan for that park. Immediately upon the approval or conditioned approval of the tentative map to the subdivider, the local agency providing parks shall initiate preparation of a master plan for the park area proposed to receive the credits. Such master plan shall be completed within the duration of the tentative map and not later than thirty-six (36) months from approval of the tentative map.

C. At the time of approval of the final map, the subdivider shall dedicate land to the local agency providing parks if such dedication is consistent with the master plan. The subdivider and the local agency shall enter into a credit agreement whereby the subdivider agrees to pay a fee in lieu of dedication of land, and provide a bond or other security acceptable to the City guaranteeing the subdivider will pay the fee, in the amount of the remainder of the obligation calculated pursuant to subsection (A) of this section. The subdivider then shall specify the improvements to the dedicated land

together with equipment located thereon he or she wishes to provide, consistent with the master plan. The public agency shall proceed with a standard competitive bid process to arrive at the lowest responsible bidder for providing such improvements and equipment. Upon completion of the competitive bid process, the subdivider shall pay the fee, which shall be used to pay for such improvements and equipment. If no fee is paid, the bond or other security shall be used for such payment. The remainder of the fee or security, if any, shall be retained by the local agency.

D. If the developer and local agency agree to allow installation of park and recreational improvements and equipment located on the dedicated land, rather than providing a fee, bond, or other security pursuant to subsection (C) of this section, the developer may do so; provided, that such improvements are consistent with the park master plan. The amount of credit to be given shall be determined jointly by the local agency providing parks, the Public Works Department, and the developer, based on evidence presented by the developer showing that such improvements were obtained and installed at a reasonable, competitive rate for the community. Only reasonable charges shall be eligible for credit under this section. The developer may choose to construct and provide such improvements and equipment only upon a showing to the Public Works Department and local agency providing parks that such a procedure will not result in costs in excess of that obtainable by using a competitive bidding process carried out by the public agency, pursuant to subsection (C) of this section.

## **Chapter 22.50**

### **RESERVATIONS AND PUBLIC ACCESS TO PUBLIC RESOURCES**

Sections:

22.50.005 Reservations.

22.50.010 Standards and formula for reservation of land.

22.50.015 Procedure.

22.50.020 Payment.

22.50.025 Termination.

22.50.030 Public access to public resources.

### **22.50.005 Reservations.**

As a condition of approval of a tentative subdivision map, the subdivider shall reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards and formula contained in this chapter.

### **22.50.010 Standards and formula for reservation of land.**

If a park, recreational facility, fire station, library, or other public use is shown on an adopted specific plan or the General Plan containing a community facilities element, recreation and parks element, or a public building or facilities element, the subdivider may be required to reserve sites in accordance with the definite principles and standards contained in such specific plan or General Plan. The reserved area shall be of such size and shape as to permit the balance of the property within which the reservation is located to develop in an orderly and efficient manner. The amount of land to be reserved shall not make development of the remaining land held by the subdivider economically unfeasible. The reserved area shall conform to the adopted specific plan or General Plan and shall be of such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

### **22.50.015 Procedure.**

The public agency for whose benefit an area has been reserved shall at the time of approval of the final subdivision map or final parcel map enter into a binding agreement to acquire such reserved area within two (2) years after the completion and acceptance of all improvements, unless such period of time is extended by mutual agreement between the public agency and the subdivider.

### **22.50.020 Payment.**

The purchase price of the reserved area shall be the market value thereof at the time of the filing of the tentative subdivision map or tentative parcel map plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved area.

### **22.50.025 Termination.**

If the public agency for whose benefit an area has been reserved does not enter into such a binding agreement, the reservation of such area shall automatically terminate.

**22.50.030 Public access to public resources.**

As a condition of approval of a final subdivision map or final parcel map, the subdivider shall provide access to and/or along public waterways, rivers, streams, reservoirs or lakes as required in Sections 66478.1 through 66478.14 of Article 3.5 of Chapter 4 of the Subdivision Map Act.

**Chapter 22.60**

**MAJOR IMPROVEMENT ASSESSMENTS**

Sections:

22.60.005 Bridge crossings and major thoroughfares.

22.60.010 Sewer facilities.

22.60.015 Groundwater recharge facilities.

**22.60.005 Bridge crossings and major thoroughfares.**

The purpose of this section is to make provision for assessing and collecting fees as a condition of approval of a final subdivision or final parcel map or as a condition of issuing a building permit for the purpose of defraying the actual or estimated costs of constructing bridges or major thoroughfares pursuant to Section 66484 of the Government Code.

Prior to the filing of a final subdivision map or final parcel map, or prior to the issuance of a building permit, the subdivider shall pay or cause to be paid any fees for defraying the actual or estimated cost of constructing planned bridges or major thoroughfares, after the proceedings and other provisions of Section 66484 of the Government Code have been complied with.

**22.60.010 Sewer facilities.**

Prior to the filing of any final subdivision map or final parcel map, the subdivider shall pay or cause to be paid any fees for defraying the actual or estimated cost of constructing planned drainage and sanitary sewer facilities for drainage and sanitary sewer areas, after the proceedings and other provisions of Section 66483 of the Government Code have been complied with.



### **22.60.015 Groundwater recharge facilities.**

Prior to the filing of any final subdivision map or final parcel map, the subdivider shall pay or cause to be paid any fees for defraying the actual or estimated cost of constructing planned groundwater facilities, after the proceedings and other provisions of Section 66484.5 of the Government Code have been complied with.

## **Chapter 22.70**

### **SUPPLEMENTAL IMPROVEMENTS REIMBURSEMENT AGREEMENTS**

Sections:

22.70.005 Required supplemental improvements.

22.70.010 Supplemental improvements, reimbursement agreement funding procedures.

22.70.015 Supplemental improvements – Bridges and major thoroughfares, drainage, sewerage, and groundwater recharge facilities.

#### **22.70.005 Required supplemental improvements.**

The subdivider may be required to install improvements for the benefit of the subdivision which may contain supplemental size, capacity or number for the benefit of property not within the subdivision as a condition precedent to the approval of a subdivision or parcel map, and thereafter to dedicate such improvements to the public. Supplemental improvements are subject to the limitations imposed on subdivisions of four or less lots as set forth in Section 66411.1 of the Government Code. The subdivider, however, shall be reimbursed for that portion of the cost of such improvements equal to the difference between the amount it would have cost the subdivider to install such improvements to serve the subdivision only and the actual cost of such improvements pursuant to the provisions of the Subdivision Map Act.

#### **22.70.010 Supplemental improvements, reimbursement agreement funding procedures.**

No charge, area benefit or local benefit district shall be established unless and until a public hearing in accordance with the provisions of EGMC Section 22.20.015 is held thereon by the Council and it finds that the fee or charge in the area of benefit or local benefit district is reasonably related to the cost of such supplemental improvements and the actual ultimate beneficiaries thereof.

**22.70.015 Supplemental improvements – Bridges and major thoroughfares, drainage, sewerage, and groundwater recharge facilities.**

If the City or Sacramento County has adopted a local drainage or sewer plan or map as required for the imposition of fees therefor, established an area of benefit for bridges or major thoroughfares, or has provided for a plan for groundwater recharge facilities, the City or Sacramento County, respectively, may impose a reasonable charge on property within the areas benefited and may provide for the collection of said charges as set forth in this title. The City or Sacramento County may enter into reimbursement agreements with a subdivider who constructs such facilities and the charges collected by the City or Sacramento County therefor may be utilized to reimburse the subdivider.

**Chapter 22.80**

**IMPROVEMENT SECURITY**

Sections:

22.80.005 Required improvement security.

22.80.010 Release of improvement security.

**22.80.005 Required improvement security.**

An improvement agreement, contract or act required or authorized by the Subdivision Map Act and this title, for which security is required, shall be secured in the manner provided for in Section 66499 of the Subdivision Map Act. The improvement security shall be one hundred (100%) percent of the total estimated cost of improvement or of the act to be performed and an additional fifty (50%) percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor and to persons furnishing labor, material or equipment to them, plus an amount determined by the Director as necessary to guarantee and warranty the work for one (1) year following its completion and acceptance against defective work, labor, or materials, plus such an additional amount to be determined by the City Attorney as necessary to cover the cost and reasonable expenses and fees, including reasonable attorneys' fees, which may be incurred by the City in successfully enforcing the obligation secured. The estimated value of all private infrastructure and improvements required by the tentative map conditions shall be also be included in determining the required security amounts, unless expressly stated to the contrary in the tentative map conditions. If the required subdivision improvements are financed and installed pursuant

to special assessment proceedings, including but not limited to Mello Roos Community Facilities Act of 1982 (Section 53311 et seq. of the Government Code) proceedings, the Director may, in his or her sole discretion, upon the furnishings by the contractor of a faithful performance bond and a labor and material bond, reduce the amount of the improvement security of the subdivider by an amount corresponding to the amount of such bonds furnished by the contractor.

#### **22.80.010 Release of improvement security.**

The security furnished by the subdivider may be released in whole or in part by the Director pursuant to Sections 66499.7 and 66499.8 of the Government Code; provided, however, no security given for the guarantee or warranty of work shall be released until the expiration of the guarantee or warranty period, and no release shall apply to costs, expenses or fees.

### **Chapter 22.90**

#### **SOIL REPORTS**

Sections:

22.90.005 Soil reports.

22.90.010 Preliminary soil report.

22.90.015 Soil investigation.

22.90.020 Approval of soil investigation.

#### **22.90.005 Soil reports.**

Soil reports shall be provided as set forth in this chapter.

#### **22.90.010 Preliminary soil report.**

Prior to the filing of the final subdivision map for City Council approval, the subdivider shall file a preliminary soil report with the Public Works Department. The report shall be prepared by a civil engineer who is registered by the state of California, based upon adequate test borings or excavations in the subdivision. The preliminary soil report may be waived if the Public Works Department determines that, due to the knowledge of such division as to the soil qualities of the subdivision, no preliminary analysis is

necessary. The determination shall be in writing and shall be made part of the data accompanying the final map.

**22.90.015 Soil investigation.**

If the preliminary soil report indicates the presence of critically expansive soils or other soil problems which, if not corrected, would lead to structural defects, a soil investigation of each lot in the subdivision shall be prepared by a civil engineer who is registered by the state of California. The soil investigation shall recommend corrective action which is likely to prevent structural damage to each dwelling proposed to be constructed on the expansive soil. The report shall be filed with the Public Works Department.

**22.90.020 Approval of soil investigation.**

The Public Works Department shall approve the soil investigation if it determines that the recommended corrective action is likely to prevent structural damage to each dwelling to be constructed on each lot in the subdivision. Appeal from such determination shall be pursuant to EGMC Chapter 1.11.

**Chapter 22.100**

**REVERSION AND EXCLUSIONS**

Sections:

22.100.005 Reversions.

22.100.010 Exclusions.

**22.100.005 Reversions.**

Subdivided property may be reverted to acreage pursuant to the provisions of Article I of Chapter 6 of the Subdivision Map Act.

**22.100.010 Exclusions.**

The property to be excluded from a subdivision and the recorded map shall be in accordance with the procedures set forth in Article II of Chapter 6 of the Subdivision Map Act.

## **Chapter 22.110**

### **DESIGN AND IMPROVEMENT STANDARDS**

Sections:

#### **Article I. Purpose and Applicability**

22.110.005 Design and improvement standards.

22.110.010 Purpose.

22.110.015 Applicability.

22.110.020 Exceptions.

22.110.025 Request for exception.

22.110.030 Project proponent responsibilities.

#### **Article II. Local Street Patterns**

22.110.035 Thoroughfare and arterial streets.

22.110.040 Collector streets.

22.110.045 Minor residential streets.

22.110.050 Private roads.

#### **Article III. Lot Patterns**

22.110.060 Purpose.

22.110.065 Compliance with law.

22.110.070 Standards.

#### **Article I. Purpose and Applicability**

##### **22.110.005 Design and improvement standards.**

To ensure that proposed subdivisions are developed in the best interests of the people of the City of Elk Grove, land subdivided under the provisions of this title shall conform to design standards and improvement standards in this chapter, along with the City of Elk Grove Improvement Standards and the City of Elk Grove Standard Construction Specifications adopted, and amended from time to time, by the City Council. Plans,

maps or other drawings for any project which includes the installation of public streets or creation of lots or division of land shall comply with the standards set forth herein.

**22.110.010 Purpose.**

It is the purpose of these design standards to provide basic planning standards applicable to the design, review and development of local street patterns and lot patterns in subdivisions, land divisions and other development projects.

**22.110.015 Applicability.**

These standards shall be applied to projects requiring one (1) or more public hearings before a discretionary permit is issued, projects requiring no public hearing, and projects on appeal. The standards provide the advisory agency or the Council flexibility to make reasonable decisions that take into account alternative designs, physical features on and off the site, and public input and testimony, as applicable.

When applying these standards, the advisory agency or the Council shall consider the identifiable effects that any proposed project may have upon other properties in the vicinity, now and in the foreseeable future.

In order to deal with physical features on and off the site, the advisory agency or the Council may take into consideration unusual topography, environmental preservation, existing and approved streets, historically established traffic patterns, neighboring lot patterns, existing and evolving land use patterns, zoning, and past policy or permit decisions.

**22.110.020 Exceptions.**

The advisory agency or the Council may authorize conditional exceptions to any of the design and improvement standards in this chapter, unless the standard specifically states that an exception cannot be granted. Such exception may be granted if the advisory agency or the Council finds, in writing, that the proposed design or improvement is in substantial compliance with the purpose and intent of the standard to be excepted.

**22.110.025 Request for exception.**

The applicant may separately request that an exception from the standard be granted. If noncompliance with these standards is identified at any stage of review of the proposed map, the application may be considered to include a request for an exception, unless the applicant objects. The advisory agency or the Council shall not grant an exception request unless a reasonable justification is made by the applicant to support the action.

Noncompliance with these standards without grant of an exception pursuant to this section shall be grounds for denial of a request.

#### **22.110.030 Project proponent responsibilities.**

All project applications shall include drawings showing the manner in which the requirements and standards in this chapter are complied with. When the applicant decides to apply for an exception, the applicant shall provide documentation and data to support and justify the request for a waiver or modification.

### **Article II. Local Street Patterns**

#### **22.110.035 Thoroughfare and arterial streets.**

A. Function. The function of thoroughfare and arterial streets is to serve with freeways to form a coordinated network of vehicle routes capable of handling the movement of goods and people through and between communities in large volumes and with efficient speeds and safety. Such roads are identified in the circulation element of the General Plan or on the appropriate community plan.

B. Design Standards. If the circulation element of the General Plan or the specific plan shows any highway, expressway, thoroughfare, arterial or similarly named road located so that any portion lies within or adjacent to a proposed project, such roadway shall be incorporated into the project in conformance with the design standards in the General Plan or specific plan. The specific location (or locations, if alternate alignments are feasible) of such roads shall be determined in coordination with and as recommended by the City Public Works Department.

The design characteristics of such roads shall conform with the current improvement standards of the Public Works Department.

Because such roads may vary in width and may involve many design factors such as acceleration/deceleration lanes, various curb heights, bicycle lanes, bus stops/turnouts, traffic dividers, driveways, and curbcuts, the precise road improvement requirements shall be determined by consultation or coordination with the Public Works Department.

#### **22.110.040 Collector streets.**

A. Functions. The functions of collector and primary residential streets, in order of relative importance, are:

1. To collect traffic from minor residential streets (or private streets) and route it to the thoroughfare and arterial streets.

2. To route traffic from thoroughfare and arterial streets to minor residential streets (and private streets).

3. To provide rapid and efficient routes of access for emergency vehicles to residential areas.

4. To connect residential areas to the neighborhood and community service facilities such as schools, parks and shopping.

B. Design Standards. Primary residential and collector streets shall be integrated with the local street pattern to best serve the above functions. The width, structural cross-section and alignment requirements shall be as set forth in the City Improvement Standards with the overall design of the street pattern based on the following:

1. New single-family residential areas with more than twenty (20), but fewer than forty (40), potential units shall be served by a primary residential or collector street at least forty-six (46' 0") feet in width if there is only one public street access into the area. Areas between forty (40) and one hundred (100) units shall be served by two (2) points of access.

2. Existing or previously approved collector streets which stub into undeveloped property are intended to be incorporated into new expanding street patterns in a logical and functional manner. Designs which terminate, isolate, or otherwise discourage collector streets from fulfilling their intended functions are strongly discouraged. Such designs shall not be approved without full consideration of the total circulation and safety impacts in relation to possible alternatives. In this regard, it is not necessarily a requirement that collector streets must connect at both ends to arterial streets or with other collector streets, but it must also be recognized that this will often be needed if the street is to properly function as intended.

#### **22.110.045 Minor residential streets.**

A. Function. The function of minor residential streets is to serve as access to the residential lots within those areas created by, or bounded by, thoroughfares, arterials, collectors, and primary residential streets and other physical boundaries (such as natural streams and railroads). Since the primary function is local vehicular access rather than intercommunity circulation, the preferable street pattern designs will discourage pass-through, sneak or shortcut traffic from traveling through these areas, but without compromising the rapid access needs of emergency vehicles, or good police patrol and surveillance needs.

B. Standards.



1. Minor residential streets are normally based on a forty-two (42' 0") foot right-of-way width. Most residential lots can be served by such streets, provided the street pattern design is such that:

- a. Minor residential cul-de-sac streets generally serve a maximum of twenty (20) dwelling units and have a maximum length of six hundred (600' 0") feet.
- b. Minor residential streets serve a maximum of one hundred (100) dwelling units when there are only two (2) public street accesses into the area.
- c. Pass-through, shortcut, or sneak street situations are not created. In those instances where through traffic is unavoidable and of probable high volume, the specific street shall be designed to primary residential or collector street standards, as applicable.

2. The intersections of minor residential streets with collector streets, or with major arterial streets, shall be designed to align with existing street(s) or previously approved street(s) on the opposite side of the street wherever possible. If such alignment is not feasible, the street shall be offset in accordance with the City Improvement Standards.

#### **22.110.050 Private roads.**

A. Function. The function of private roads is to serve the specific vehicular circulation needs of individuals or groups, rather than the needs of the public as a whole. Two (2) basic characteristics of private roads are that the owners of the roads can generally restrict use to designated persons or vehicles, and that the maintenance of the road is the owners' responsibility. Virtually every lot is involved in some way with at least one (1) private road. In its simplest form, the driveway from the public street to the garage of a home is a private road. In more complicated forms, there may be entire communities served by private roads. Similarly, governmental facilities, mobile home parks, apartment complexes, commercial parking lots, farms, ranches, industrial tracts, recreational facilities, condominiums, etc., may use private roads.

B. Standards. The following standards are a compilation of Elk Grove Municipal Code, Zoning Code and other requirements that relate to private roads which are listed here to clarify that private roads are an element of local street patterns. These standards may not be waived or modified except as specified in the respective code governing such standards.

1. The Uniform Fire Code includes certain requirements related to road width, turning radius, height of obstructions, etc., which apply to the alignment of private roads.
2. Private roads shall be designed and constructed in accordance with the City Improvement Standards and the City Standard Construction Specifications.

3. Private maintenance agreements between the parties using and responsible for the upkeep of a private road may be required before additional development on the road will be permitted.

### **Article III. Lot Patterns**

#### **22.110.060 Purpose.**

This section spells out laws which shall be complied with to create new lots. This section also spells out standards for creating lot patterns that are best suited to the purpose for which the lots are created and, at the same time, create the least potential land use conflicts. In some applications, the standards will conflict with one another or will conflict with the standards for street patterns. When this happens, an exception pursuant to EGMC Sections 22.110.020 and 22.110.025 may be considered, with the most compatible neighborhood development pattern as the ultimate objective. Staff's reports, proposed alternatives, and comments will be based on an analysis of the overall impacts of proposed lots as a total concept, as well as any conflict with any single standard.

#### **22.110.065 Compliance with law.**

A. Each project which proposes to divide land shall result in lots which are consistent with and well suited to the land use designations and policies set forth in the General Plan and in the adopted specific plan if applicable, including both maps and texts. Potential population densities of residential lots shall not exceed the densities set forth in the General Plan or specific plans.

B. Each lot shall conform to the lot size, lot width, and lot frontage requirements as set forth in the Zoning Code, unless a variance, waiver, or modification is obtained, as specified in the Zoning Code.

C. Lot lines shall be located in relation to existing structures so as to maintain required setbacks, yards, and other open space requirements, as set forth in the Zoning Code, unless a variance, waiver, or modification is obtained, as specified in the Zoning Code.

D. Lot lines shall be located in relation to existing private septic systems or wells so as to maintain the distance requirements as set forth in the County Health Code. Lots which propose the installation of private septic systems or wells shall be arranged such that there is sufficient area on the proposed lots' facilities to meet the placement and distance requirements of the County Health Code.

E. Each parcel of land shall front on a public street or be served by a private road which is a component of an approved local street pattern.

F. Exceptions from the requirements of subsections (A) through (E) of this section shall not be allowed pursuant to EGMC Sections 22.110.020 and 22.110.025.

#### **22.110.070 Standards.**

A. New lots shall be arranged and oriented to maximize effective use of passive solar energy. Each proposal will be evaluated by the advisory agency or the City Council to determine whether it can be demonstrated that alternate designs are feasible, and such design may be presented to the hearing bodies. Upon such presentation, the hearing body may request alternate designs to be prepared by the developer, or may deny the submitted map on the basis that the proposal does not maximize effective use of passive solar energy. Such factors as configuration and orientation of the property being divided, the nature of surrounding development, the nature of the proposed development, circulation patterns, and existing topography shall be weighed in comparison of possible alternatives.

B. New lots shall be arranged to create comparable yard relationships wherever possible. The creation of interior side yards located adjacent to rear yards should be avoided, and in those cases where such arrangements cannot be reasonably avoided, restrictions may be placed on the final map which limit building height or building location.

C. The design of the project, including the location of lot lines, shall be such that, to the degree reasonably possible, existing contours and existing trees will be preserved. To achieve this purpose, grading restrictions or building location restrictions may be placed on the final map. Alternatively, the overall design may be revised such that less grading will be needed, or that existing trees become located in the normal yard areas of proposed lots.

D. New lots shall be consistent with the development standards set forth in the Zoning Code.

E. Each lot shall maintain a relative consistency with the predominant neighborhood development character. Lots which are found to be significantly out of character, either in area, frontage, shape, or access provisions may be denied if it is found that such character differences may result in detrimental impacts on adjacent properties.

F. It is recognized that the potential breach of private contracts, such as Covenants, Codes and Restrictions (CC&Rs), is a judicial matter and cannot constitute a basis of denial for a proposed land division; however, the City does not desire to become a party

to such breach by the inference of its actions and may, when reasonable to do so, require a resolution of the private conflict before taking any action, or may pursue such legislative or administrative resolution as may be available.

G. Any new lot shall meet the following standards:

1. All lots shall provide a buildable area outside the 100-year floodplain which provides for construction having a minimum habitable floor elevation that is at least one (1' 0") foot above the water surface elevation of the 100-year floodplain; and

2. All lots shall provide for a buildable area which is located at least fifty (50' 0") feet from the centerline of a creek, drainage channel, or designated tributary as defined in EGMC Section 22.10.141.

## **Chapter 22.120**

### **VIOLATIONS**

Sections:

22.120.005 Misdemeanor.

22.120.010 Voidability of documents.

22.120.015 Action on alleged violations.

22.120.020 Action by the Director.

22.120.025 Procedure before the Planning Commission.

22.120.030 Consolidation of actions.

#### **22.120.005 Misdemeanor.**

Any person who violates the provisions of this title shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

#### **22.120.010 Voidability of documents.**

Any deed or conveyance, sale or contract to sell made contrary to the provisions of this title is voidable to the extent and in the same manner as provided in Section 66499.32 of the Government Code.

**22.120.015 Action on alleged violations.**

All officials and public employees of the City vested with the duty or authority to issue permits or other forms of entitlement for the development of land shall comply with the provisions of this title and shall not issue any permit, license or other entitlement for use, construction or other purpose in conflict with the provisions of this title or the provisions of the Subdivision Map Act. If any official or employee of the City or any private citizen becomes aware of any alleged division of land which may be in violation of this title or of the Subdivision Map Act, such person shall, in writing, bring such violation to the attention of the Public Works Director.

**22.120.020 Action by the Director.**

The Director, upon receipt of a written notice of violation pursuant to EGMC Section 22.120.015, shall:

- A. Set for public hearing before the Planning Commission the issue of whether there has been a violation of the Subdivision Map Act and/or this title, as alleged.
- B. File a "Notice of Intention to Record a Notice of Violation" with the Sacramento County Clerk-Recorder. Said notice shall include:
  - 1. The date, time and place of public hearing.
  - 2. A description of the alleged violation.
  - 3. A statement to the owner that he or she may present evidence regarding the alleged violation.
  - 4. A description of the location of the property involved including the parcel number or numbers.
  - 5. A statement that a finding of a violation may result in the filing with the Sacramento County Clerk-Recorder the notice of such violation which will be constructive notice of such violation to subsequent purchasers of the property.
  - 6. A statement that a finding of violation may result in the institution of a criminal action against the owner of the property.
- C. Mail a copy of the notice of violation to the property owners as shown on the latest assessment roll not less than thirty (30) days before the date of the hearing.
- D. Advise all departments of the City to refuse issuance of any permits or other entitlements relating to land use pending a decision upon the alleged violation.
- E. Prepare a staff report on the alleged violation.

F. Give notice of the public hearing as specified in EGMC Section 22.20.020.

**22.120.025 Procedure before the Planning Commission.**

The Planning Commission shall conduct a public hearing on the alleged violation and shall, during such hearing, consider the staff report of the Director and all other relevant evidence. At the conclusion of the hearing, the Planning Commission shall determine:

A. Whether the alleged violation has been proved, and if proved, whether the violation is contrary to the public health and the public safety. No public official, department, or agency of the City thereafter shall issue any permit or other entitlement which may authorize the development of the property until such time as a certificate of compliance has been issued as provided in this title.

B. If the Planning Commission determines that no violation has occurred, it shall cause the Director to issue and record a certificate of compliance which shall constitute a release of the notice of intention to record a notice of violation previously recorded.

C. The Planning Commission's determination shall be supported by written findings.

**22.120.030 Consolidation of actions.**

If, at any time prior to the hearing on the alleged violation, the property owner completes an application for a certificate of compliance, the Planning Commission shall consolidate its action on the notice of violation and shall otherwise consider the matter as an application for a certificate of compliance as provided in this title.

**Chapter 22.130**

**CERTIFICATE OF COMPLIANCE**

Sections:

22.130.005 Application.

22.130.010 Action on application.

22.130.015 Procedure before the Planning Commission.

**22.130.005 Application.**

Any person owning real property or any vendee pursuant to a contract of sale may request a certificate of compliance by filing an application with the Director. The

application shall include the creating deed and the application fee payment required by Council resolution.

#### **22.130.010 Action on application.**

If the Director determines that the parcel for which an application for a certificate of compliance has been filed is a lawful parcel as defined in EGMC Section 22.15.050 and otherwise complies with the Subdivision Map Act, then the Director shall cause a certificate of compliance to be filed for record with the Sacramento County Clerk-Recorder. If the Director determines that the parcel for which an application for a certificate of compliance has been filed is not a lawful parcel or does not comply with the Subdivision Map Act, then the application shall be referred to the Planning Commission for public hearing and the hearing fee payment established by Council resolution shall be made by the applicant. This hearing fee payment shall be made within thirty (30) days of the referral date or the application shall be deemed to be withdrawn.

Upon receipt of the hearing fee payment, the Director shall set for public hearing before the Planning Commission the issues of whether the parcel is a lawful parcel and otherwise complies with the Subdivision Map Act. The Director shall prepare a written report for the Planning Commission of the specific reasons why the Director determined that the parcel was not a lawful parcel or does not comply with the Subdivision Map Act. A copy of this written report shall be furnished to the applicant at least five (5) days prior to the Planning Commission hearing.

#### **22.130.015 Procedure before the Planning Commission.**

The Planning Commission shall, within thirty (30) days of the date of the hearing fee payment, conduct a public hearing on the issue of whether the parcel is a lawful parcel and otherwise complies with the Subdivision Map Act. During the hearing, the Planning Commission shall consider the written report prepared by the Director and all other relevant evidence.

A. If the Planning Commission determines that the parcel is a lawful parcel and otherwise complies with the Subdivision Map Act, the Director shall cause a certificate of compliance to be filed for record with the Sacramento County Clerk-Recorder in accordance with the requirements of Section 66499.35 of the Government Code, as amended.

B. If the Planning Commission determines that the parcel is not a lawful parcel or does not comply with the Subdivision Map Act, then the Planning Commission shall issue a conditional certificate of compliance in accordance with the requirements of Section 66499.35 of the Government Code.

C. Issuance of a certificate of compliance or a conditional certificate of compliance is not a representation that the property can be developed under applicable laws and regulations, including, but not limited to, the Zoning Code, and certificates of compliance and conditional certificates of compliance shall contain a statement to this effect.

## **Chapter 22.140**

### **NOTICE OF MERGER**

Sections:

22.140.005 Notice to Planning Director.

22.140.010 Procedures.

22.140.015 Action by the Planning Commission.

#### **22.140.005 Notice to Planning Director .**

Any officer, agent, or employee of the City with knowledge that real property has merged or is alleged to have merged pursuant to EGMC Section 22.15.040 shall notify the Planning Director of such merger or alleged merger.

#### **22.140.010 Procedures.**

The Director shall set for hearing before the Planning Commission the issue of whether or not merger of property has occurred, and whether a notice of such merger shall be recorded with the Sacramento County Clerk-Recorder. A notice of the hearing shall be sent to the owners of property as shown on the latest equalized assessment roll not less than fifteen (15) days before the date of the hearing. The notice shall contain a description of the property, a statement that a notice of merger may be filed with the Sacramento County Clerk-Recorder, and shall indicate the time, date and place of the hearing at which time the owner may present evidence as to why a notice of merger should not be recorded. In preparation for the hearing, the Director shall prepare a written staff report which shall be made available to the property owner and the Planning Commission. The Director shall ensure that no permits or other entitlements for construction shall be issued for said property until the issue has been decided.

#### **22.140.015 Action by the Planning Commission.**

The Planning Commission shall conduct a hearing on the purported merger and shall consider the staff report of the Director and all other relevant evidence. At the



conclusion of the hearing, the Planning Commission shall determine and prepare written findings thereof as to whether a merger has occurred. If it is determined a merger has occurred, the Planning Commission shall direct that the Planning Director file a notice of the merger with the Sacramento County Clerk-Recorder. The Planning Commission shall also advise all operating departments of its determination.

## **Chapter 22.300**

### **STREET DEDICATION MAP**

Sections:

22.300.005 Generally.

22.300.015 Form and content.

22.300.020 Staff reports.

#### **22.300.005 Generally.**

A street dedication map may be filed to dedicate a public street or portion thereof, if the dedication does not create a subdivision.

#### **22.300.015 Form and content.**

The submitted material shall conform to the rules adopted by the Planning Director as to form and content.

#### **22.300.020 Staff reports.**

The Planning Director shall prepare and submit a written report to the Development Review Committee on street dedication maps.

A. This report shall specify the location of the proposed street and the surrounding conditions, the neighborhood street pattern, the interest of the general public, and any other factors pertinent to the ultimate uses of the contiguous land.

B. A copy of the report shall be served on the subdivider or his agent at least three (3) days prior to any hearing or action on the map. Any changes in the report shall be served at least three (3) days prior to any subsequent hearing.

## **Chapter 22.400**

### **PLATS OF SURVEY**

#### Sections:

22.400.005 Requirements.

22.400.010 Filing a plat of survey.

#### **22.400.005 Requirements.**

A plat of survey may be filed whenever a survey establishes or marks on the ground one or more corners, angle points or lines which do not appear on any map previously recorded or filed and which disclose any of the matters described in subdivisions (a) through (d) of Section 8762 of the Business and Professions Code. The plat shall conform to the requirements of Chapter 15 of Division 3 of the Business and Professions Code and this chapter, and shall be filed within ninety (90) days after the establishment or marking of the corners, angle points or lines. No plat of survey need be filed if the engineer or surveyor files a final map of a subdivision, a record of survey, or a final parcel map.

#### **22.400.010 Filing a plat of survey.**

An engineer or surveyor who wishes to file a plat of survey shall submit the plat to the Director for review. The plat shall be neatly and legibly drawn, printed or reproduced on a transparency which will provide a legible print. The form and content of a plat shall be to the satisfaction of the Director, except that the engineer or surveyor shall be the sole judge of the technical form and content of a plat of survey and the Director may not impose requirements with regard to the interpretation of data, surveying methods, or accuracy. Any plat or survey submitted to the Director after being examined by him and found to comply with the requirements of this chapter shall be placed in the Department's files as a permanent record.

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 7-2009**

**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 March 25, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 8, 2009 by the following vote:***

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

***NOES:           COUNCILMEMBERS:       None***

***ABSTAIN:       COUNCILMEMBERS:       None***

***ABSENT:        COUNCILMEMBERS:       None***

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

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***Susan J. Blackston, City Clerk  
City of Elk Grove, California***