

ORDINANCE NO. 12-2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 4.13 RELATING TO UNATTENDED DONATION BOXES

WHEREAS, the City is responsible for protection of public health and the environment; and

WHEREAS, numerous cities in the region have noticed a proliferation of unattended donation boxes; and

WHEREAS, many of these boxes are placed without the written consent or permission of the property owner, attract illegal dumping and scavenging from their contents, and are not operated by charities but by for-profit entities, thus reducing the contributions available to other non-profit organizations.

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

Section 1: Purpose and Authority

Under California Constitution Article XI, Section 7, the City of Elk Grove may enact ordinances to preserve and protect public safety, health and welfare. To this end, the City Council of the City of Elk Grove adopts Chapter 4.13 in order to regulate unattended donations boxes to avoid illegal dumping and scavenging, as well as requiring the consent or permission of the property owner prior to such boxes being placed on private property. For public property, other provisions of the municipal code and state law already provide protection and the ability to remove these boxes.

Section 2: Adoption of Chapter 4.13.

Chapter 4.13 is added to the Elk Grove Municipal Code to read as follows:

Chapter 4.13 REGULATION OF UNATTENDED DONATION BOXES

Sections:

- 4.13.010 Definitions.
- 4.13.020 Permits.
- 4.13.030 Renewal of Permits.
- 4.13.040 Requirements and Maintenance.
- 4.13.050 Revocation of Permit, Removal of Unattended Donation Boxes and Liability.
- 4.13.060 Violation-Penalty.
- 4.13.070 Appeals to City Council.
- 4.13.080 Violations, Enforcement, Actions and Remedies.

4.13.010 Definitions.

“City Manager” means the City Manager of the City of Elk Grove or designee.

“Operator” means a person who utilizes or maintains unattended donation box(es) to solicit donations of salvageable personal property.

“Permittee” means the property owner who is issued a permit authorizing placement of unattended donation box(es).

“Property owner” means the person who owns the real property where the unattended donation box(es) are or are proposed to be located.

“Residential district” means RD-1, RD-2, RD-3, RD-4, RD-5, RD-6, RD-7, RD-10, RD-15, RD-25, RD-30, AR-1, AR-2, AR-5, AR-10, AG-20, and AG-80 zoning districts as established pursuant to Title 23 of this code.

“Unattended donation box” means any unattended container, receptacle, or similar device that is located on any lot within the City and that is used for soliciting and collecting donations of clothing or other salvageable personal property. This term does not include recycle bins for the collection of recyclable material governed or regulated by the Zoning Code or any unattended donation box located within a building.

4.13.020 Permits.

- A. It is unlawful and a public nuisance for any property owner or other person to place, operate, maintain or allow unattended donation boxes on real property unless: 1) the person placing the box first obtains a permit pursuant to this chapter, and 2) the donation box is placed, operated and maintained in accordance with all provisions in this chapter.
- B. The permit application shall be made on a form provided by the City and shall include the following information:
 1. The name, address, email, website (if available) and telephone number of the applicant;
 2. Written proof sufficient to establish that the operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code section 148.3, as amended;
 3. The text of the disclosures that will be made on the unattended donation box as required by EGMC Section 4.13.040(A)(3); and
 4. The physical address of the property owner’s real property and a drawing sufficient to indicate the proposed location of the unattended donation box on the property owner’s real property and the size of the proposed unattended donation box.

5. The written consent of the permittee, owner of the real property on which the box will be placed.
- C. Each application shall be accompanied by a nonrefundable fee in the amount established by resolution of the City Council. This fee shall be in addition to any fee or tax imposed by the City pursuant to any other provision of this code.
- D. Applications shall be filed with the City Manager.
- E. Within sixty (60) days of receiving a completed application, the City Manager shall issue a permit or deny the issuance of a permit.
- F. The City Manager shall not issue a permit unless:
 1. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
 2. The operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code Section 148.3, as amended;
 3. The proposed location of the unattended donation box on the property owner's real property is in compliance with all applicable laws.
- G. If the City Manager denies an application, the City Manager shall state, in writing, the specific reasons for denial.
- H. The term of the permit shall expire one (1) year from the date of issuance.
- I. No person to whom a permit has been issued shall transfer, assign, or convey such permit to another person.
- J. Prior to expiration of the permit, the permittee may voluntarily cancel the permit by notifying the City Manager in writing of the intent to cancel the permit. The permit shall become void upon the City Manager's receipt of a written notice of intent to cancel the permit.

4.13.030 Renewal of Permits.

- A. A permittee may apply for permit renewal by submitting to the City Manager before the expiration of the permit, a renewal application and a non-refundable fee in an amount set by resolution of the City Council.
- B. The City Manager shall either approve or deny the renewal of a permit within sixty (60) days of receipt of the complete renewal application and payment of the renewal fee. The failure of the City Manager to timely act shall constitute approval of the renewal of the permit.
- C. The City Manager shall approve the renewal of a permit if he or she finds that no

circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that are inconsistent with any finding required for approval of a new permit as specified in EGMC Section 4.13.020 or that would justify the revocation of the permit as specified in EGMC Section 4.13.050.

4.13.040 Requirements and Maintenance.

- A. A permittee shall operate and maintain or cause to be operated and maintained all unattended donation boxes located in the City as follows:
 - 1. Unattended donation boxes shall be maintained in good condition and appearance with no structural damage, holes, or visible rust, and shall be free of graffiti;
 - 2. Unattended donation boxes shall be locked or otherwise secured;
 - 3. Unattended donation boxes shall contain the following contact information in two (2") inch type visible from the front of each unattended donation box: the name, address, email, and phone number of both the permittee and operator;
 - 4. Unattended donation boxes shall be serviced and emptied as needed, but at least every thirty (30) days.
- B. The permittee shall maintain or cause to be maintained the area surrounding the unattended donation box(es) free of any junk, debris or other material and shall be responsible to the extent provided by law for the cost to abate any violation.
- C. Notwithstanding any other provision of this code, it is unlawful for any person to place an unattended donation box in any residential district.
- D. Notwithstanding any other provision of this code, it is unlawful to locate any unattended donation box less than four hundred (400' 0") feet from any other unattended donation box.
- E. Notwithstanding any other provision of this code, it is unlawful to locate more than one (1) unattended donation box on each parcel of real property.
- F. Notwithstanding any other provision of this code, it is unlawful to locate any unattended donation box on required parking spaces.

4.13.050 Revocation of Permit, Removal of Unattended Donation Boxes and Liability.

The City Manager shall have the right for cause to revoke any permit issued hereunder. Any of the grounds upon which he or she may refuse to issue an initial permit shall also constitute grounds for such revocation. In addition, the failure of the permittee to comply with the provisions of this Chapter or other provisions of this Code or other law

shall also constitute grounds for revocation of the permit. The City Manager shall provide a written notification to the permittee stating the specific grounds for revocation. Upon revocation, the unattended donation box shall be removed from the permittee's real property within thirty (30) days and if not removed within this time period, the City may remove, store and dispose of the unattended donation box at the expense of the permittee. Upon revocation, a permittee shall be prohibited from applying for a permit for a period of one (1) year. Any violation of the provisions of this chapter is a public nuisance subject to abatement pursuant to EGMC Chapter 16.18.

4.13.060 Violation-Penalty.

Any person violating any provision of this Chapter is guilty of a misdemeanor.

4.13.070 Appeals to City Council.

Any person aggrieved by the decision rendered by the City Manager in granting or denying an application for a permit under this Chapter or in revoking a permit issued under this Chapter may appeal the decision to the City Council in accordance with EGMC Chapter 1.11. The appeal shall be made by filing a written notice thereof with the City Clerk not later than ten (10) days after receiving notice of the decision of the City Manager. The City Council shall hold a hearing on the appeal and its decision thereon shall be final. Instead of hearing the appeal, the City Council may refer the matter to a hearing examiner pursuant to EGMC Chapter 1.11. The hearing examiner's decision shall be in writing. The hearing officer's decision shall have the effect specified in EGMC Section 1.11.130, and judicial review shall be governed by EGMC Section 1.11.150.

4.13.080 Violations, enforcement, actions and remedies.

Each failure to comply with any provision of this Title or any regulation promulgated under this Title is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Chapters 1.04 and 16.18.

Section 3:

The provisions of EGMC Chapter 4.13 as enacted by this Ordinance shall apply to all unattended donation boxes located within the City as of the effective date of this Ordinance. All persons who have one or more unattended donation boxes located on their real property as of the effective date of this Ordinance shall have sixty (60) days from that date to file an application for a permit as provided for in this chapter. Any such person who has filed a timely application for a permit shall not be subject to the provisions of this chapter relating to unattended donation boxes until a permit is issued or denied to the applicant.

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: 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 fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) 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: 12-2010
INTRODUCED: May 12, 2010
ADOPTED: May 26, 2010
EFFECTIVE: June 25, 2010


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

Date signed: June 1, 2010

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 12-2010**

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

I, Jason Lindgren, Interim 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 May 12, 2010 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 26, 2010 by the following vote:

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

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Jason Lindgren, Interim City Clerk
City of Elk Grove, California**