

ORDINANCE NO. 5-2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 1.15 (CLAIMS AGAINST THE CITY) TO TITLE 1 (GENERAL PROVISIONS), ADDING CHAPTER 1.18 (TAX AND FEE APPEALS) TO TITLE 1 (GENERAL PROVISIONS), AMENDING CHAPTER 1.11 (APPEALS) TO TITLE 1 (GENERAL PROVISIONS), AMENDING SECTION 3.08.110 (APPEAL) TO CHAPTER 3.08 (UNIFORM TRANSIENT OCCUPANCY TAX) TO TITLE 3 (REVENUE AND TAXATION), ADDING SECTION 3.12.110 (APPEAL) TO TITLE 3 (REVENUE AND TAXATION), AND AMENDING SECTIONS 3.40.190(C) (REFUNDS) AND 3.40.200(A) (APPEALS) TO THE ELK GROVE MUNICIPAL CODE REGARDING ESTABLISHING PROCEDURES FOR PROCESSING CLAIMS FILED AGAINST THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS AND VOLUNTEERS AND REGARDING THE "PAY FIRST" RULE FROM ARTICLE XIII, SECTION 32 OF THE CALIFORNIA CONSTITUTION

WHEREAS, the City of Elk Grove ("City") is authorized by the provisions of Section 935 of the California Government Code to establish procedures for all claims against the City for money or damages, provided that such claims are not governed by any other statute or regulations; and

WHEREAS, the City Council wishes to adopt such procedures in order to process such claims more efficiently and expeditiously; and

WHEREAS, the City Council wishes to apply the requirements of Article XIII, Section 32 of the California Constitution to disputes involving taxes, fees and other charges imposed by the City; and

WHEREAS, the City Council wishes to adopt such procedures in order to preserve and protect the taxpayers' dollars.

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

Section 1: Addition of Chapter 1.15 – Claims Against the City.

Chapter 1.15 (Claims Against the City) is hereby added to Title 1 (General Provisions) of the Elk Grove Municipal Code to read as follows:

**Chapter 1.15
CLAIMS AGAINST THE CITY**

Sections:

- 1.15.010 Authority.
- 1.15.020 Presentation of claims - Prerequisite for bringing suit.
- 1.15.030 Contents of claim - Review of sufficiency.
- 1.15.040 Claim prerequisite to suit.

- 1.15.050 Exhaustion of administrative remedies.
- 1.15.060 Time barred claim.
- 1.15.070 Effective date of Chapter.

1.15.010 Authority

This ordinance is enacted pursuant to Section 935 of the California Government Code.

1.15.020 Presentation of claims - Prerequisite for bringing suit.

All claims against the City for money or damages not otherwise governed by the Government Claims Act, California Government Code Sections 900 et seq., or another state law (hereinafter in this section, "claims") shall be presented within the time, and in the manner, prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this section, except that neither the rule of Section 911 nor the rule of Section 911.3 is adopted and neither shall apply, as those provisions now exist or shall hereafter be amended.

1.15.030 Contents of claim - Review of sufficiency.

A claim shall be made in writing and presented to the City Clerk by the claimant or by a person acting on the claimant's behalf. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. All claims shall contain the information required by California Government Code Section 910. The City Manager, or his or her designee, shall review all claims for sufficiency of information. In accordance with California Government Code Section 910.8, the City Manager, or his or her designee, may, within twenty (20) days of receipt of a claim, either personally deliver or mail to the claimant a notice stating the deficiencies in the claim presented. If such notice is delivered or sent to the claimant, the City shall not act upon the claim until at least fifteen (15) days after such notice is sent.

1.15.040 Claim prerequisite to suit.

A. In accordance with California Government Code Sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the City prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements of this section.

B. Any action brought against the City upon any claim or demand shall conform to the requirements of Sections 940 through 949 of the California Government Code. Any action brought against any employee of the City shall conform with the requirements of Sections 950 through 951 of the California Government Code.

1.15.050 Exhaustion of administrative remedies.

Prior to seeking judicial relief with respect to a dispute regarding a tax, fee or other charge imposed by the city, any person directly aggrieved shall: 1) exhaust any administrative remedies specified by any other provision of the Elk Grove Municipal Code or other applicable law, 2) pay the full amount owed the City, including applicable penalties and interest, and 3) present a claim for refund as required by any or all of EGMC Chapter 1.15;

the Government Claims Act, Government Code Section 910 *et seq.*; and other applicable law.

1.15.060 Time barred claim.

Nothing in this Chapter revives or reinstates any cause of action that, on the effective date of this Chapter, is barred by failure to comply with any previously applicable statute, ordinance, or regulation requiring the presentation of a claim prior to a suit, or by failure to commence any action thereon within the period prescribed by an applicable statute of limitations.

1.15.070 Effective date of Chapter.

The provisions of this Chapter shall apply retroactively to any causes of action occurring prior to the effective date of this Chapter.

Section 2: Addition of Chapter 1.18 – Tax and Fee Appeals.

A new Chapter 1.18 (Tax and Fee Appeals) is hereby added to Title 1 (General Provisions) of the Elk Grove Municipal Code to read as follows:

**Chapter 1.18
TAX AND FEE APPEALS**

Sections:

- 1.18.010 Application.
- 1.18.020 Conflict with other chapters of the Elk Grove Municipal Code.
- 1.18.030 Filing a Request for Appeal.
- 1.18.040 City's rejection of Request for Appeal.
- 1.18.050 Setting hearing date, time and place.
- 1.18.060 Notice of hearing.
- 1.18.070 Qualifications of Appeals Hearing Officers.
- 1.18.080 Disqualification of Appeals Hearing Officer(s).
- 1.18.090 Powers of Appeals Hearing Officers.
- 1.18.100 Procedures for conducting appeal hearings.
- 1.18.110 Continuing jurisdiction.
- 1.18.120 Failure to appear at appeal hearing.
- 1.18.130 Tax and fee appeal decision.
- 1.18.140 Effect of tax and fee appeal decision.
- 1.18.150 Judicial review.
- 1.18.160 Failure to comply with tax and fee appeal decision.
- 1.18.170 Record of hearings.

1.18.010 Application.

This chapter is intended as the sole means of quasi-judicial appeal of a tax or fee assessment or denial of refund claim brought against the City, except as otherwise expressly provided by law or the Elk Grove Municipal Code.

1.18.020 Conflict with other chapters of the Elk Grove Municipal Code.

To the extent this chapter conflicts with any quasi-judicial tax or fee appeal procedure already set out in the Elk Grove Municipal Code, the procedures in this chapter shall control.

1.18.030 Filing a Request for Appeal.

A. Any person seeking to challenge a tax or fee assessment or the denial of a refund claim (hereinafter an “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 fourteen (14) days of the mailing of the determination of the tax or fee due. 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 appeal, supporting documentation, and a copy of the notice of tax or fee due or denial of tax or fee refund.

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 1.18.170.

D. Pursuant to Article XIII, Section 32 of the California Constitution, the appellant shall pay any tax, interest and penalties due the City before filing a Request for Appeal and shall attach proof of payment to the Request for Appeal.

1.18.040 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 1.18.030, including but 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 the Request for Appeal”. The Notice Rejecting the Request for Appeal 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 twenty-one (21) 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 twenty-first (21st) day, or the appeal deadline is deemed expired. In that event, the underlying departmental decision will be considered final.

1.18.050 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.

1.18.060 Notice of hearing.

Notice indicating the time, place and date of the 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 fourteen (14) days prior to the hearing date. The notice, which shall be called the "Notice of Hearing", shall include the amount of tax assessed, 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.

1.18.070 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.

The officers selected to hear appeals shall be known as "Appeals Hearing Officers". An Appeals 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 appellant(s). Appeals Hearing Officers presiding at administrative hearings may be compensated by the City Manager or his or her designee. The employment, performance evaluation, compensation and benefits of any 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.

1.18.080 Disqualification of Appeals Hearing Officer(s).

A. 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 (Section 87100, et seq., of the Government Code) and shall otherwise comply with the disqualification provisions of Canon 3(E) of the Code of Judicial Ethics.

B. Each party shall have the right to make one (1) peremptory challenge to disqualify an Appeals Hearing Officer without having to demonstrate actual bias, prejudice, interest, or other cause for disqualification. This challenge shall be filed in writing to the City Clerk no later than seven (7) days after the date of the Notice of Hearing. This challenge shall include the names of the parties to the hearing, the name of the Appeals Hearing Officer, the date of the scheduled hearing, and shall be signed and dated by the challenging party.

C. Any person designated to serve as an Appeals Hearing Officer is subject to disqualification at any time for bias, prejudice, conflict of interest, or for any other reason for which a judge may be disqualified in a court of law. Any party may petition the City Manager, or his or her designee, to disqualify an Appeals Hearing Officer on the aforementioned basis. The petition shall be filed in writing with the City Clerk and shall include the names of the parties to the hearing, the name of the Appeals Hearing Officer the date of the scheduled hearing, and shall be signed and dated by the challenging party.

D. The City Manager, or his or her designee, 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.

E. If a substitute is required for an Appeals Hearing Officer due to disqualification or unavailability, a substitute shall be appointed by the City Manager, or his or her designee, in accordance with these rules and regulations.

1.18.090 Powers of Appeals Hearing Officers.

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 (1) 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 seven (7) days before the hearing, the Appeals Hearing Officer shall subpoena witnesses, documents, and other evidence where the attendance of the witness or 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. Approve any settlement voluntarily entered into by the parties.

1.18.100 Procedures for conducting appeal hearings.

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 the appellant. The City, by Department Director or his or her designee, shall have the burden of proving the tax assessment by a preponderance of evidence. The City Council may promulgate by resolution additional rules and procedures for the conduct of appeal hearings.

1.18.120 Failure to appear at appeal hearing.

Failure of the appellant to either pay the tax, fee, interest and penalties due, 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 that the tax or fee assessed or denial of refund is appropriate. In that event, the underlying notice of tax or fee

assessment or denial of refund shall become final and any tax, fee, interest and penalties shall immediately become due and payable.

1.18.130 Tax and fee appeal decision.

A. After considering all of the testimony and evidence submitted at the appeal hearing, the Appeals Hearing Officer shall issue a written appeal decision. The written appeal decision of the Appeals Hearing Officer shall be issued as soon as practical and preferably within seven (7) days of the conclusion of the hearing.

B. The appeal decision shall become final on the date the Appeals Hearing Officer serves the appeal decision. The Appeals Hearing Officer shall serve one (1) copy of the appeal decision on the respondent by forwarding the appeal decision to the City Clerk for the City of Elk Grove and one (1) copy on the appellant. The City Clerk shall file a copy of the appeal decision with the appropriate department director. The appeal decision shall be served either by personal service or by first class certified mail, return receipt requested.

1.18.140 Effect of tax and fee appeal decision.

An appeal decision of an Appeals Hearing Officer shall be final and no appeal may be made to the City Council.

1.18.150 Judicial review.

A. 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 city or an officer thereof, to prevent or enjoin the collection of taxes and fees sought to be collected pursuant to the EGMC, and payment of any and all such taxes and fees, including any applicable interest and penalties shall be required as a condition precedent to seeking judicial review, redetermination or appeal of any liability to pay such taxes and/or fees.

B. Once an appeal decision becomes final as provided in this chapter, any person directly aggrieved by the decision must, in addition to paying the taxes and fees as required in this section, file a claim against the City as specified in EGMC Section 1.15.

1.18.160 Failure to comply with tax and fee appeal decision.

A. After the Appeals Hearing Officer issues an appeal decision, the Department Director or his or her designee shall take appropriate steps to collect the tax, fee, interest and penalties due.

B. Upon the failure of a party to comply with the terms and deadlines set forth in the appeal decision, the Department Director or his or her designee may use all appropriate legal means to recover all tax, fee, interest and penalties due including other costs and fees that are authorized by the Elk Grove Municipal Code or law.

C. Failure to comply with an appeal decision constitutes a misdemeanor pursuant to California Penal Code Section 428.

1.18.170 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.

Section 3: Amending Section 1.11.020 (Conflict with other chapters of the Elk Grove Municipal Code).

Section 1.11.020 of the Elk Grove Municipal Code is amended to read as follows:

1.11.020 Conflict with other chapters of the Elk Grove Municipal Code.

To the extent this chapter conflicts with any quasi-judicial appeal procedure for administrative citations and notices of violation already set out in the Elk Grove Municipal Code, the procedures in this chapter shall control.

Section 4: Amending Section 1.11.140 (Effect of administrative appeal decision).

Section 1.11.140 of the Elk Grove Municipal Code is amended to read as follows:

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. Any amount found to be due shall be immediately due and payable upon the service of notice.

Section 5: Amending Section 1.11.150 (Judicial Review).

Section 1.11.150 of the Elk Grove Municipal Code is amended to read as follows:

1.11.150 Judicial review.

Once an administrative order becomes final as provided in this chapter, any person directly aggrieved by the administrative *appeal* decision must first pay the full amount owed the City plus any applicable penalties and interest. They then may seek 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.

Section 6: Amending Section 3.08.110 (Appeal).

Section 3.08.110 of the Elk Grove Municipal Code is hereby amended to read as follows:

3.08.110 Appeal.

Any operator aggrieved by any decision of the City with respect to the amount of such tax, fee, interest and penalties owed the City, if any, may appeal to the City by filing a notice of appeal pursuant to EGMC Chapter 1.18.

Section 7: Addition of Section 3.12.110 (Appeal).

Section 3.12.110 is hereby added to Chapter 3.12 (Real Property Transfer Tax) of Title 3 (Revenue and Taxation) of the Elk Grove Municipal Code to read as follows:

3.12.110 Appeal.

Any person aggrieved by any decision of the City with respect to the amount of such tax, fee, interest and penalties owed the City, if any, may appeal to the City by filing a notice of appeal pursuant to EGMC Chapter 1.18.

Section 8: Amending Section 3.40.190(C) (Refunds).

Section 3.40.190 of the Elk Grove Municipal Code is hereby amended to read as follows:

3.40.190 Refunds.

C. The filing of a written claim pursuant to EGMC Chapter 1.15 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of EGMC Chapter 1.15.

Section 9: Amending Section 3.40.200(A) (Appeals).

Section 3.40.200 of the Elk Grove Municipal Code is hereby amended to read as follows:

3.40.200 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to EGMC Section 3.40.190), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to EGMC Section 3.40.190), deficiency determination, assessment, or administrative ruling of the Tax Administrator shall be required to comply with the appeals procedure of this section. Compliance with this section and EGMC Chapter 1.15 shall be a prerequisite to a suit thereon. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

Section 10: 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 11: 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.

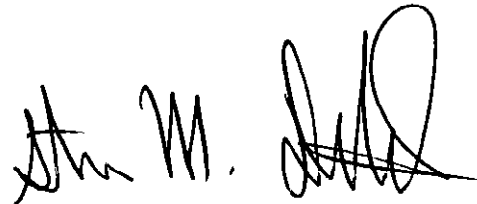
Section 12: Savings Clause.

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect 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 13: 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: 5-2011
INTRODUCED: January 26, 2011
ADOPTED: February 9, 2011
EFFECTIVE: March 11, 2011



STEVEN M. DETRICK, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Date signed: February 15, 2011

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 5-2011**

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

I, Jason Lindgren, 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 January 26, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 9, 2011 by the following vote:

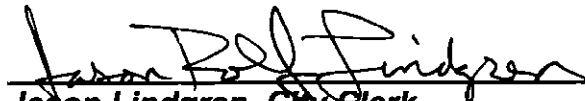
AYES : **COUNCILMEMBERS:** *Detrick, Cooper, Davis, Hume, Scherman*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

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


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