

ORDINANCE NO. 5-2007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING AND REENACTING CHAPTER 2.64 OF THE ELK GROVE MUNICIPAL CODE RELATING TO UNCLAIMED PROPERTY

The City Council of the City of Elk Grove does ordain as follows:

Section 1. AUTHORITY.

The City Council enacts this ordinance pursuant to the authority granted to cities by Article XI, Section 7 of the California Constitution.

Section 2. REPEAL.

Chapter 2.64 of the Elk Grove Municipal Code is hereby repealed in its entirety.

Section 3. ENACTMENT.

Chapter 2.64 is added to the Elk Grove Municipal Code to read in its entirety as follows.

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 of 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.
- 2.64.120 Expenses of Sale of Unclaimed Property.

2.64.010. Unclaimed Property; Definition.

"Unclaimed property," as used in this article, 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:

(1) 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

(2) 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 article, 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 sections 2.64.040 through 2.64.060 of this chapter, 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 Dollars (\$250.00) 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 Dollars (\$250.00), 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:

(1) 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 (2/3) 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.

(2) Any unclaimed property with a value of not more than five hundred dollars (\$500) which has been unclaimed for a period of at least 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) below;
- (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) below; 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 that is published in the county, 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) working days after publication of the notice of intention to sell in a newspaper of general circulation published in the county. 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 City Treasurer 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.

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 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 Government Code section 36933(c)(1).

ORDINANCE NO. 5-2007

INTRODUCED: January 10, 2007
ADOPTED: January 24, 2007
EFFECTIVE: February 23, 2007



JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 5-2007**

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

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance was duly introduced on January 10, 2007 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 24, 2007 by the following vote:

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

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

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



Peggy E. Jackson

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