

ORDINANCE NO. 2-2013

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE TITLE 4 RELATING TO BUSINESS REGULATION

WHEREAS, the City desires to maintain information on business activity occurring in Elk Grove; and

WHEREAS, a method to collect, analyze and use this information is necessary to benefit both the business and residential aspects of the community; and

WHEREAS, the best method of collecting this information is through the requirement of a business license to operate in the City; and

WHEREAS, the business license is used for the purpose of collecting and analyzing information on what business activity is occurring in order to assist in serving those businesses better and attracting new business that would be complementary to the City's current business community as well as to City residents.

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

Section 1: Amend Chapter 4.02 relating to General Provisions for Business Licenses.

Elk Grove Municipal Code Chapter 4.02 is hereby amended to read:

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.”
- 4.02.035 Definitions – “General business license.”
- 4.02.040 Definitions – “Person.”
- 4.02.045 Definitions – “Convicted” or “conviction.”
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4.02.010 Purposes.

The purpose of this section is to provide a procedure for the licensing of business activities within the City, pursuant to Section 37101(a) of the California Government Code, so that the City may accumulate data related to the types of business that operate in Elk Grove and use that data to further enhance the city's business environment.

4.02.015 Organization of title.

The provisions of this title are organized as follows:

A. This chapter contains introductory and master provisions governing creation of a business registry through issuance of a business license.

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. 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.

D. 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.

E. 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.

4.02.035 Definitions – “General business license.”

“General business license” shall mean a license issued by the Finance Director.

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 Contents and posting of licenses.

A. The contents of each Business License shall include, but need not be limited to, the following:

1. A complete description of the Business issued the license;
2. The name of the Person licensed;
3. The date of issuance and date of expiration of the license;

B. The original business license issued to the business or its employees, with any applicable conditions, shall be posted conspicuously on the premises in full public view. Original, for purposes of this section, shall not include photocopies or reproductions of the license issued by the City.

4.02.065 License required.

No person shall engage in, operate or conduct a business within the City, unless under and by the authority of a valid, unexpired and unrevoked Business License issued pursuant to this chapter. A person shall be deemed to operate or conduct a Business in violation of this section if the person, without a required Business License in effect, supervises, directs, organizes, manages or controls or is in any way responsible for or in charge of the Business for which the license is required.

4.02.070 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 4.02.075 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 processing 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.

4.02.075 Exemptions.

A Business License shall not be required for, and the provisions of this chapter shall not be otherwise applicable to, those businesses exempted by Federal or California state law from business license processing or from business license fees. The following types of business described by this section shall be, by the City's authority, required to obtain, but not pay fees for obtaining a business license:

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 Sections 511 through 515 of the Internal Revenue Code (bookstores, coffeeshops, child care centers, etc.);

B. Apartments, rooming houses, duplexes, and other residential facilities in which living units are rented or leased solely on a term of thirty (30) days or longer;

C. Agricultural pursuits consisting of the growing of crops, raising of livestock, and dairying, including auxiliary and ancillary uses incidental to the operation of a farm or ranch, consisting of the purchase and storage of substances, materials, supplies, animal feeds and produce, and the marketing of farm products; provided, however, that a General Business License shall be required in connection with any wholesaling, processing, storage or manufacturing use which involves assembly of the products of multiple farms or ranches by a cooperative or other Business for marketing distribution, unless the marketing and sale of crops is done entirely on the property on which the crops sold are grown.

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

E. 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;

F. 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;

G. 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;

H. 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;

I. 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;

J. 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;

K. 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;

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

M. 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;

N. 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.

4.02.080 Home occupations.

Unless specifically exempt elsewhere in this chapter, a Business License shall be required for any business or activity operated or conducted as a home occupation, as home occupation is defined by EGMC Chapter 23.82.

4.02.085 Renewal of license.

A. At least thirty (30) days prior to expiration of a Business License, the Finance Director will endeavor to mail the licensee an application for a two (2) year renewal. The application for renewal shall be on such a form, and shall include such information, as prescribed and required by the Finance Director, 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 licensee shall file the application for renewal, and any required fees, with the Finance Director prior to the expiration of the immediately preceding license.

C. Within fifteen (15) days of receiving a complete application, the Finance Director shall issue the renewed Business License unless grounds for denial in this chapter exist.

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

4.02.090 Grounds for denial.

The Finance Director shall deny an initial application or application for renewal of a Business License if the Finance Director finds that the applicant failed to provide sufficient or adequate information as required by this chapter.

4.02.095 Procedures for denial.

A. The Finance Director's denial of an initial application or application for renewal of a Business License, along with the findings for warranting denial, shall be in writing. The Finance Director's written notice of denial shall be provided to the applicant.

B. Denial of an initial application or application for renewal of a Business License shall relate solely to the location at which the Business is proposed and shall not affect the conduct of such Business at another location within the City.

C. With respect to denial of an application for renewal, the immediately preceding Business License shall be deemed to be in full force and effect for a period of fifteen (15) days following the date of denial notice to the applicant. If the holder of the license files an appeal within the time and manner prescribed, the license shall remain in effect during the pendency of the appeal.

4.02.100 Transferability.

A solicitation license, general business license or special business license shall not be transferable or assignable from one (1) person to another.

Each such license shall terminate and be deemed to have no further force or effect upon: 1) a transfer from one (1) 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 Finance Director notice of: 1) the transfer from one (1) 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.

4.02.105 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.

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

During the term of a general business license, the holder shall file in writing with the Finance Director 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 3) 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 Finance Director 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.

4.02.115 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 Finance Director 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 Finance Director may require.

4.02.120 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 (2) years from the date of issuance.

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.

4.02.125 Administration.

Except as otherwise provided, the Finance Director 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 Finance Director is charged with responsibility to administer a particular provision, the Finance Director 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 Finance Director 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.

4.02.130 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 (1) 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.

4.02.135 Hearing Authority.

Whenever the term "Hearing Authority" is utilized in this title, it shall be deemed to refer to the hearing processes set forth in Title 1.11 of the Elk Grove Municipal Code.

4.02.140 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, 1.08, and 16.18.

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 4.02.04, 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.

4.02.145 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 the public area of any place of business which is subject to the provisions of this title during hours when the business is open to the public 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.

4.02.150 Laws not enforced.

There are many ordinances and other laws applicable to businesses licensed under EGMC Chapters 4.10 through 4.54 which are not sought to be enforced under this licensing process. Such laws include, but are not limited to, building, fire, electrical, zoning 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.

By issuing a business license, the City makes no representation or finding, express or implied, that the business is compliant with applicable laws and regulations, or that the business is otherwise authorized to conduct business in the City of Elk Grove. Business licensees must comply with all federal, state and local laws. 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.

4.02.155 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.

Section 2: Amend Chapter 4.04 relating to Solicitation Licenses and Permits.

Elk Grove Municipal Code Chapter 4.04 is hereby amended to read:

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 Chief of Police.

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 Chief of Police.

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 Chief of Police, 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 (1) or more employees or representatives of the firm who are subject to the requirements of this chapter.

B. If the Chief of Police 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 Finance Director and paying the required fees. The Finance Director 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 Finance Director shall issue a solicitation license unless:

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

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

C. 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:

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 (1) 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 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.

4.04.035 Conditions on solicitation license and permit:

Every solicitation license issued by the Finance Director 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 display 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 Finance Director, 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 Finance Director and Chief of Police may require.

C. On the face of each permit, 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.

D. While engaged in solicitation activities, the solicitor's permit shall be displayed on the person of the solicitor at all times while engaged in soliciting activities.

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 Finance Director 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 Finance Director.

The application for renewal shall be filed with the Finance Director not later than the date of expiration of the immediately preceding license. The Finance Director 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 Finance Director finds in writing that one (1) or more of the following grounds exists:

A. That information in the latest application was untrue;

B. That the Finance Director or the Chief of Police has acquired information supporting a finding that one (1) 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 (1) of the licensee's solicitors has violated one (1) or more conditions imposed; or

D. That the licensee or any one (1) of the licensee's solicitors has violated any term, condition or requirement or prohibition established by EGMC Chapter 4.02 or this chapter 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.

Section 3: Repeal of Chapter 4.06 related to General Business Licenses.

Elk Grove Municipal Code Chapter 4.06 titled General Business Licenses is repealed in its entirety.

Section 4: Amend Particular Sections of Chapter 4.10 relating to Special Business Licenses and Employee Permits.

Under Elk Grove Municipal Code Chapter 4.10, EGMC Sections 4.10.005, 4.10.020, 4.10.025, 4.10.030, 4.10.040, 4.10.060, and 4.10.155 are hereby amended to read:

...

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 (1) pool table or more is a pool hall;
21. Mobile food vendors;
22. Movie and television productions;
23. Dance clubs, halls, and public dances.
24. Clowns, mascots or legal adults with facial disguise engaged in business at or in relation to events tailored to minors
25. Massage establishments and massage technicians;
26. Mobile computer repair;
27. Solicitors;
28. Smoking Lounges;
29. Pet Stores who engage in the selling of animals as defined in Section 122350 of the California Health and Safety Code;
30. Any Business for which a Special Business License is required by this Code.

...

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 is also regulated under the provisions of

EGMC Chapter 4.02. 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 4.02, 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 Finance Director. The Finance Director 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 Finance Director 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 Finance Director 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.

...

4.10.040 Issuance.

A. The Chief of Police shall approve the issuance of the special business license by the Finance Director 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 (1) 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.

...

4.10.060 Renewal of licenses.

A. Not later than forty-five (45) days prior to expiration of the term of a special business license, the Finance Director 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 Finance Director and the Chief of Police.

B. The application for renewal shall be filed with the Finance Director 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 (1) 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 (1) or more conditions applicable to the preceding license have been violated.

...

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 Finance Director. 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 Finance Director, 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 (1) 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.

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 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: 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 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 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 NO. 2-2013
INTRODUCED: February 13, 2013
ADOPTED: February 27, 2013
EFFECTIVE: March 28, 2013




GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: March 5, 2013

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 2-2013**

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 February 13, 2013 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 27, 2013 by the following vote:


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

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