

RESOLUTION 2004-263

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING PROCEDURES FOR CONDUCTING ADMINISTRATIVE APPEAL HEARINGS IN THE CITY OF ELK GROVE

WHEREAS, the City Council of the City of Elk Grove (the "Council") on November 3, 2004, duly adopted Ordinance 31-2004, establishing an administrative appeal procedure.

WHEREAS, in Ordinance 31-2004 the City Council declared its intent to create a uniform procedure to be used in administrative appeal hearings in the City of Elk Grove. These procedures are intended to create a mechanism for efficiently, expeditiously and fairly resolving issues that arise under the Elk Grove Municipal Code.

WHEREAS, the City Council intends to create a uniform fee for appeals in the City of Elk Grove.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that:

Section 1. Recitals. The foregoing recitals are true and correct and this Council so finds and determines.

Section 2. Purpose. Hearings before an Appeals Hearing Officer will be conducted in accordance with Chapter 1.11 of Title 1 of the Elk Grove Municipal Code and this Resolution, except as otherwise provided by the Elk Grove Municipal Code or by state or federal law. Fees for appeals shall be in accordance with this Resolution.

Section 3. Repeal of Resolution No. 2004-150. The City Council hereby repeals Resolution No. 2004-150 relating to hearing officer fees for appeals of violations of the City's Stormwater Drainage Ordinance.

Section 4. Selection and Compensation of Appeals Hearing Officer(s). After the City Clerk receives a Request for Appeal, the City Manager, or his/her designee, shall select an Appeals Hearing Officer at random from the pool of qualified Appeals Hearing Officers under contract with the City of Elk Grove. The employment, performance evaluation, compensation and/or benefits of the Appeals Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative penalties or the rulings upheld, revised or otherwise issued by the Appeals Hearing Officer.

Section 5. Disqualification of Appeals Hearing Officer(s). An Appeals Hearing Officer shall disqualify himself or herself from serving as Appeals Hearing Officer in a particular matter where he/she has a conflict of interest within the meaning of the Political Reform Act (Government Code sections 87100 *et seq.*) and shall otherwise comply with the disqualification provisions of Canon 3.E. of the Code of Judicial Ethics.

In addition, each person designated to serve as an Appeals Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Each party shall have the right to disqualify one (1) Appeals Hearing Officer for a particular matter for one of the above-stated reasons. The party seeking disqualification shall provide notice to the City Clerk of his or her objection to the Appeals Hearing Officer within five (5) business days of receipt of the Notice of Hearing. Upon receipt of the request for disqualification, the City Clerk or his/her designee shall disqualify that Appeals Hearing Officer. In the event of such a disqualification, a new Appeals Hearing Officer shall be randomly selected from the panel of alternate Appeals Hearing Officers established by the City Manager.

Section 6. Hearing Procedures. Hearings shall be conducted pursuant to the following procedures:

1. **Appeals Hearing Officer Opens Hearing:** Appeals Hearing Officer will open the hearing.
2. **Disclosure of Ex Parte Comments:** The Appeals Hearing Officer will publicly announce any testimony or evidence they received outside the hearing process. This public statement will be reflected in the record.
3. **Staff Report:** Staff presents the Staff report, places relevant evidence in the record and responds to questions from the Appeals Hearing Officer.
4. **Appellant's Presentation:** The appellant will be given the opportunity to present testimony and evidence in conformity with Chapter 1.11 of the Elk Grove Municipal Code and this Resolution and to respond to questions from the Appeals Hearing Officer.
5. **Rebuttal By Staff:** Staff shall have an opportunity to respond to any evidence presented by the appellant. This testimony shall be used for the purpose of summarization and rebuttal only, and is not to be used to introduce new evidence or testimony, or to restate direct testimony.
6. **Appellant's Opportunity to Respond to Evidence:** The appellant will be given an opportunity to respond to any evidence presented during the course of the hearing. This testimony shall be used for the purpose of summarization and rebuttal only, and is not to be used to introduce new evidence or testimony, or to restate direct testimony.
7. **Close Hearing:** After all evidence has been heard, the Appeals Hearing Officer shall either close the hearing or, in limited circumstances, continue the hearing for a later date in accordance with this Resolution.
8. **Deliberations and Decision:** The Appeals Hearing Officer shall then deliberate on the matter by considering the evidence, testimony and comments and adopt findings, if appropriate, or defer the final decision for preparation of draft findings consistent with a preliminary decision. The Appeals Hearing Officer shall issue a decision within five (5) business days.

Section 7. Evidence. Necessary parties shall be offered a reasonable opportunity to present all relevant facts, applicable law and analysis demonstrating the merits of their appeal. Only relevant evidence shall be admitted. Evidence is relevant if it has a tendency in reason to prove or disprove a material fact that is in dispute. Hearsay evidence is only admissible to supplement or explain other admissible evidence and is not sufficient in and of itself to support a finding of fact. The rules of privilege shall be effective to the same extent as recognized in civil actions. The burden of proof shall rest on the party asserting the affirmative of an issue. Each party shall have the right to rebut evidence against him/her.

Section 8. Written Testimony. Any person may submit written comments on any matter that is the subject of an appeal. Written comments shall not be read into the record, unless allowed by the Appeals Hearing Officer. Persons who wish to submit written comments, testimony or evidence on any matter that is the subject of an appeal must provide such written documents to the City Clerk at least five (5) business days prior to the hearing. Comments received by the noticed deadline shall be included in the administrative record before the Appeals Hearing Officer. Staff may provide responses to written comments. The Appeals Hearing Officer will only accept into the public record written evidence or testimony submitted after the noticed deadline where an injustice to one of the parties would result if the late evidence is not admitted. Where evidence is accepted into the public record after the noticed deadline, the Appeals Hearing Officer may continue the hearing.

Section 9. Continuances. A continuance may be granted at the discretion of the Appeals Hearing Officer where either party makes a persuasive case that more time is needed to prepare a case, either because of the complexity of the issues or some element of surprise in the matters discussed or because fairness requires a continuance. The party requesting the continuance bears the burden of proof to demonstrate why a continuance should be granted, and the opposing party shall be given the opportunity to respond.

Section 10. Record of Hearings. The City Clerk shall cause all testimony to be tape-recorded and shall receive and mark all exhibits. A certified court reporter will not be provided. If either party would like a transcript of the hearing, he/she may hire a certified court reporter and obtain a transcript at his/her own expense.

Section 11. Fees for Appeal. The administrative appeal fee shall be \$1,000. On each July 1, commencing on July 1, 2005, the Administrative Fee for an Appeals Hearing Officer shall be automatically increased by the lesser of Local Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose Area for All Urban Consumers or 5% of the amount in effect for the previous Fiscal Year. The CPI used shall be as determined by the Bureau of Labor Statistics from April to April beginning with the period from April 2004 to April 2005.

Section 12. Administrative Interpretations. In conducting the hearing, the Appeals Hearing Officer shall give weight to the administrative interpretation of an

ordinance provision by the department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.

Section 13. Format of Administrative Appeal Decision. The Administrative Appeal Decision shall affirm, modify or reject the previous action, including a decision regarding whether to affirm, modify or reject the civil penalties and costs and, depending upon the review of the evidence, may increase or decrease the total amount of civil penalties and costs assessed.

The Appeals Hearing Officer may issue an Administrative Appeals Decision that requires a person to cease from violating the Municipal Code or applicable state codes and to make necessary corrections within a specific time frame.

As part of the Administrative Appeal Decision, the Appeals Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the person's ability to complete compliance by specified deadlines.

The Appeals Hearing Officer may issue an Administrative Appeals Decision that imposes additional civil penalties that will continue to be assessed until the full compliance with the Appeals Hearing Officer's Administrative Appeals Decision hearing examiner's decision and corrects the violation.

If the Appeals Hearing Officer rejects the underlying City action being appealed on the basis that it has no basis in law or fact, the Appeals Hearing Officer in his/her discretion may require the City to refund the appeal fee collected from the appellant.

Section 14. Open to public. Hearings will be held in Council Chambers and will be open to the public. Members of the public shall not have a right to public comment during the hearing. The Appeals Hearing Officer shall have a right to take appropriate action to preserve the decorum of the hearing, including ordering a member of the public to leave the Chambers.

Section 15. Fee Deferrals. The City Clerk, or his/her designee, may grant a fee deferral if the applicant declares under penalty of perjury and provides sufficient documentation that the appellant is receiving benefits pursuant to: (1) the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 through 12205.2 of the Welfare and Institutions Code), (2) the Aid to Families with Dependent Children (AFDC) program (42 United States Code 601 through 644), (3) the Food Stamp program (7 United States Code 2011 through 2027) or (3) Section 17000 of the Welfare and Institutions Code, or (4) if the appellant declares under penalty of perjury that his/her monthly income is one hundred twenty-five (125) percent or less of the current monthly poverty threshold annually established by the Community Services Administration pursuant to Section 625 of the Economic Opportunity Act of 1964, as amended. The appellant shall furnish such financial information as the City Clerk, or his/her designee, deems necessary to make a decision.

An appellant desiring to defer the payment of an appeal fee shall apply for the deferral at the same time the Notice of Appeal is filed. The appellant shall furnish the information requested by the City Clerk, or his/her designee, to substantiate the deferral request within two (2) business days after the Notice of Appeal is filed with the City Clerk. If the information requested is not furnished within two (2) business days, the City Clerk, or his/her designee, may deny the fee deferral request. After an appellant requests deferral of the appeal fee, the applicable dates or time periods for hearing the appeal shall be tolled until the City Clerk, or his/her designee, grants or denies the deferral.

The party seeking the fee deferral must be the real party in interest of the appeal. The appellant shall not be granted a fee deferral if there is any interested party to the appeal who is financially capable of paying the fee. No person shall be granted more than one (1) fee deferral per 12-month period.

If a fee deferral is granted based upon the criteria specified above, the appellant shall pay 25% of the appeal fee at the time the appeal is filed and the remaining 75% of the fee after the hearing, pursuant to a payment schedule established by the City. Any amount not paid to the City within one (1) year shall be collected pursuant to any and all legal means available to the City.

Section 16. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 20th day of October 2004.



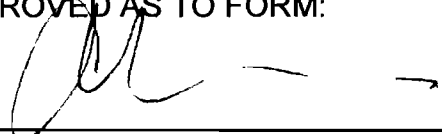
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY MANZANETTI,
CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-263**

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 resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 20th day of October 2004 by the following vote:

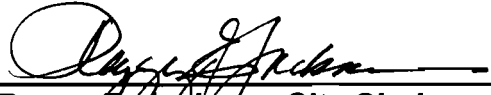
AYES 4: COUNCILMEMBERS: Scherman, Soares, Briggs, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 1: COUNCILMEMBERS: Cooper





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